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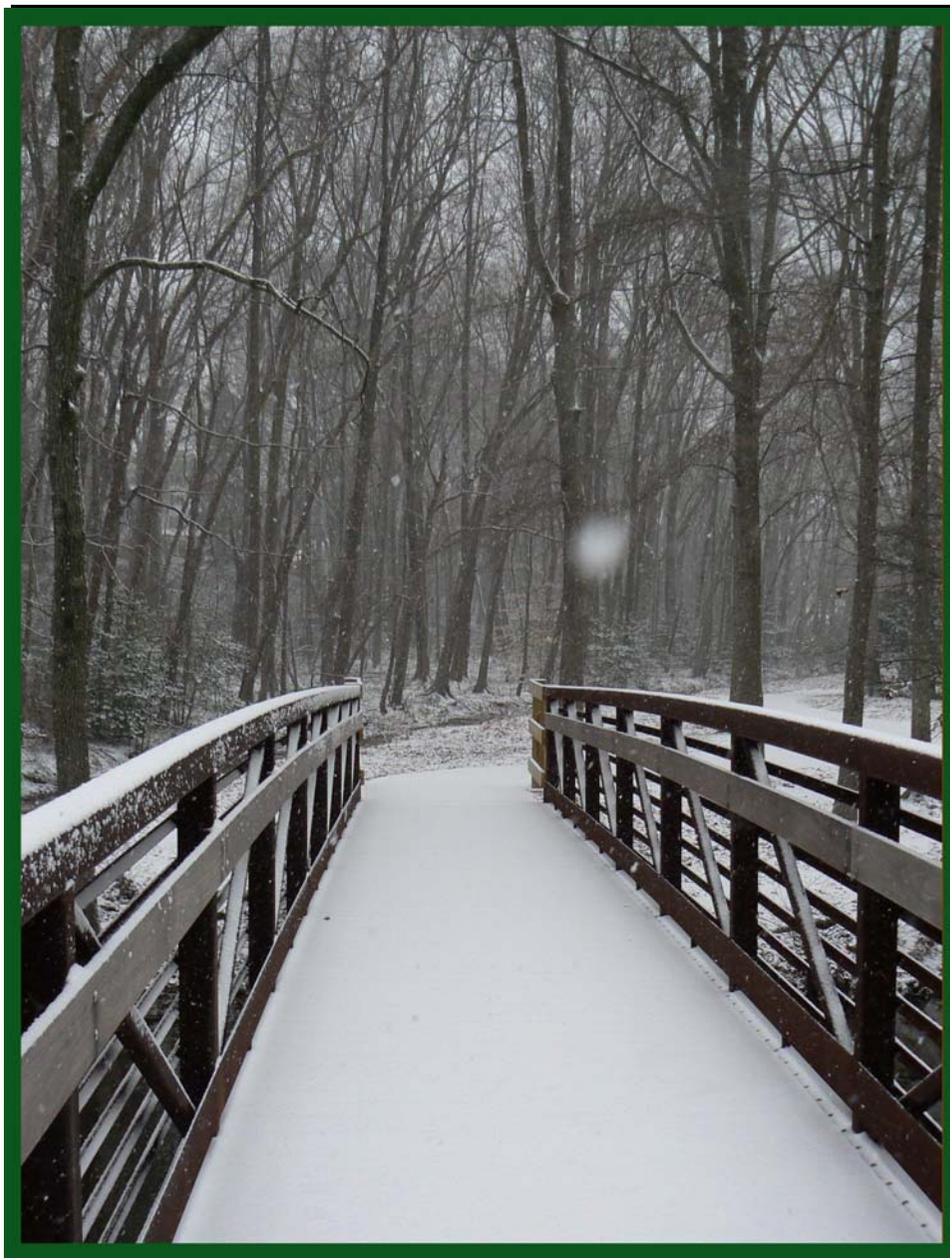
# Delaware Register of Regulations

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Issue Date: December 1, 2008

Volume 12 - Issue 6, Pages 697 - 852

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## IN THIS ISSUE:

Regulations:  
Proposed  
Final

Governor:  
Appointments  
General Notice  
Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before November 15, 2008.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

The *Delaware Register of Regulations* is an official State publication established by authority of 69 *Del. Laws*, c. 107 and is published on the first of each month throughout the year.

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The *Register* will also publish some or all of the following information:

- Governor's Executive Orders
  - Governor's Appointments
  - Agency Hearing and Meeting Notices
  - Other documents considered to be in the public interest.
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## CITATION TO THE DELAWARE REGISTER

The *Delaware Register of Regulations* is cited by volume, issue, page number and date. An example would be:

11 **DE Reg.** 759-786 (12/01/07)

Refers to Volume 11, pages 759-786 of the *Delaware Register* issued on December 1, 2007.

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## SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the *Delaware Register of Regulations* is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the *Register of Regulations*, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the *Register of Regulations*.

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
January 1	December 15	4:30 p.m.
February 1	January 15	4:30 p.m.
March 1	February 16	4:30 p.m.
April 1	March 16	4:30 p.m.
May 1	April 15	4:30 p.m.

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**Symbol Key**

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

**Proposed Regulations**

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

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**DEPARTMENT OF EDUCATION****OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(b) and 14 Delaware Code, Chapter 16  
(14 **Del.C.** §122(b) & 14 **Del. C.** Ch. 16))  
14 **DE Admin. Code** 611

**Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)****611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

**B. Synopsis of Subject Matter of the Regulation**

The Secretary of Education intends to amend 14 **DE Admin. Code** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems by clarifying eligibility for placement in the Consortium Discipline Alternative Programs; clarifying the district's responsibility for providing a written decision if a student is not placed; and to delineate the requirement for Student Success Plans as required by 14 **DE Admin. Code** 505.

The amendments are congruent with the requirements of House Bill No. 326 of the 144<sup>th</sup> General Assembly.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 5, 2009 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

**C. Impact**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulations address alternative programs for discipline purposes which should have a positive effect on student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation will ensure that all students receive an equitable education even if they are assigned to an alternative program for discipline purposes.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? Health and safety are part of the design of the alternative programs for discipline purposes.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation will ensure that students' rights in the alternative program are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The regulations will preserve the same authority and flexibility of decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulation will not place any additional or any unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulations.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no additional cost due to the amendment of this regulation.

## 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems

### 1.0 Eligible Students

- 1.1 Except as otherwise provided in this regulation, any student who is expelled by a local school district, who is subject to expulsion or who otherwise seriously violates the district discipline code shall be eligible for placement at a Consortium Discipline Alternative Program site.
- 1.42 Local school districts ~~may~~ shall place a student at a Consortium Discipline Alternative Program site ~~only~~ if the district board:
  - 1.42.1 Has expelled the student for a violation of the district's discipline code; or
  - 1.42.2 Determines that the student has engaged in conduct that permits the board to expel the student; or
  - 1.42.3 Determines that the student has exhibited such severe discipline problems that expulsion is imminent; and
  - 1.2.4 Determines the student is not eligible for placement at a Consortium Discipline Alternative Placement pursuant to the conditions in 2.0.
- 1.23 School districts may place a student in a Consortium Discipline Alternative Program ~~site~~ for classroom or school environment disruptions only if:
  - 1.23.1 Such disruptions are chronic and repetitive; and
  - 1.23.2 The student has participated in all available School Based Intervention Programs pursuant to 14 **DE Admin. Code** 609 and continues to routinely and seriously disrupt the classroom and impede the learning of other students.

**2.0 Ineligible Students**

- 2.1 Any student expelled or suspended pending expulsion for behavior equivalent to a violation of the following is not eligible for, and may not be placed at a Consortium Discipline Alternative Program site.
- 2.1.1 11 **Del.C.** §613 Assault in the First Degree; class C felony; or
  - 2.1.2 11 **Del.C.** §1457 Possession of a Weapon in a Safe School and Recreation Zone; class D, E, or F; class A or B misdemeanor; or
  - 2.1.3 11 **Del.C.** §802 Arson in the Second Degree affirmative defense; class D felony; or
  - 2.1.4 11 **Del.C.** §803 Arson in the first degree; class C felony; or
  - 2.1.5 11 **Del.C.** §770 Rape in the fourth degree; class C felony; or
  - 2.1.6 11 **Del.C.** §771 Rape in the third degree; class B felony; or
  - 2.1.7 11 **Del.C.** §772 Rape in the second degree class B felony; or
  - 2.1.8 11 **Del.C.** §773 Rape in the first degree class A felony; or
  - 2.1.9 16 **Del.C.** §4753A Trafficking in marijuana, cocaine, illegal drugs, methamphetamine, LSD, or designed drugs or
  - 2.1.10 Any behavior equivalent to or greater than the offenses in 2.1.1 through 2.1.9.

2.2 Provided further, any student expelled or suspended pending expulsion may not be placed at a Consortium Discipline Alternative Program if the school district determines, by a preponderance of the evidence, the student is inappropriate for such placement. When determining whether a student is inappropriate for placement in a Consortium Discipline Alternative Program, the school district shall consider the availability of space in the program to serve the student, and the student's age.

**3.0 Written Decision Required**

When a school board expels a student but determines the student shall not be placed at a Consortium Discipline Alternative Program ~~under subsections 2.1.1 to 2.1.10 of this regulation~~, the school district's ~~written~~ decision shall be in writing and address with specificity the reason for non placement and the evidence in support thereof. Such decisions shall be reported to the Delaware Department of Education's Office of School Climate and Discipline within five working days of such decision.

**4.0 Informing the Parents, Guardians, Relative Caregiver or Students (If the Student is Age 18 or Older)**

Districts shall inform the parents, guardians, Relative Caregiver or students (if the student is age 18 or older) of the alternative education options that are then currently available to them if the students have been expelled or expulsion is being considered. These options may include, but are not be limited to, the Consortium Discipline Alternative Program, a GED Program, James H. Groves High School and continued special education and related services for children with disabilities as determined by the student's individual eligibility for participation in such programs. A student's eligibility for such alternative education options is determined by the requirements of such programs.

**5.0 Grade Level to be Served**

Eligible students in the Consortium Discipline Alternative Program shall be primarily those who are enrolled in grades 6 through 12, however students in the lower grades may also be served through Alternative Program funds.

**6.0 Placement at Consortium Discipline Alternative Program Sites**

- 6.1 Each district shall establish an Alternative Placement Team to review each case and prescribe the appropriate placement for students. The Placement Team, in concert with the Consortium Discipline Alternative Program staff, shall design an Individual Service Plan (ISP) for each student that will include educational goals, behavioral goals, and services needed by both students and their families. The ISP shall include a tentative transition plan.
- 6.1.1 The Alternative Placement Team shall be composed of a representative of the Consortium Discipline Alternative Program staff; a district level coordinator who will be designated by the

superintendent; the building level principal, assistant principal or other person as appropriate; the student's custodial adult; guidance counselor or school social worker; and a representative from the Department of Services for Children Youth and Their Families (DSCYF) with knowledge of the student's and family's needs as appropriate. Other individuals may be invited as determined by the placement team.

6.1.1.1 Students who are being placed at a Consortium Discipline Alternative Program site as a transition from DSCYF facilities shall have an ISP developed in concert with the DSCYF facility team, the Alternative Placement Team, and the student's custodial adult.

6.1.2 If students from either a school district or DSCYF facility are children with disabilities, appropriate special education staff shall be included in placement considerations. The Alternative Placement Team and the Individual Education Program (IEP) Team may be the same so long as the membership of the IEP Team meets the requirements of 14 **DE Admin. Code** 925.

## 7.0 September 30 Enrollment Count

7.1 Students enrolled at a Consortium Discipline Alternative Programs site shall be counted in the enrollment of the sending school.

7.2 Students shall be reported for the level of special education service as defined by the current IEP.

7.3 If a student was enrolled the previous year in a Career Technical Program in the reporting school, the students shall be reported as enrolled in the next Career and Technical course in the program series.

## 8.0 Consortium Discipline Alternative Program Setting

8.1 The Consortium Discipline Alternative Program setting shall be apart from the regular school setting, however, a part of a school building may be used for these programs if the students do not interact with the regular school population or use any school facility at the same time as the regular school population.

8.1.1 Use of other agency facilities (Boys and Girls Club, YMCA, YWCA, etc.) is encouraged. Consortium Discipline Alternative Program settings shall meet all applicable health and safety laws and regulations for student occupancy.

## 9.0 Consortium Discipline Alternative Program Design

9.1 The Consortium Discipline Alternative Program shall include an educational program designed to maintain and improve skills aligned to the Delaware State Content Standards that will allow students to reenter the regular school program with a reasonable chance and expectation for success. Opportunities for academic acceleration shall also be provided.

9.1.1 The academic program shall include applied learning activities that encourage students' active participation in the learning process as opposed to work sheets and other "seat oriented" drill exercises. Study skills, test taking strategies for academic confidence building, and Character Education shall be integrated with the Delaware State Content Standards.

9.1.1.1 Credit for work accomplished in the Consortium Discipline Alternative Program setting shall be automatically transferred to the sending school.

9.1.2 All students enrolled in Consortium Discipline Alternative Programs shall participate in the Delaware Student Testing Program (DSTP) or successor statewide student assessment program, and Student Success Plans (SSP) as required by 14 **DE Admin. Code** 505.

## 10.0 Staffing

Instructional staff shall include educators who are licensed and certified in the content areas of English language arts, mathematics, science and social studies.

## 11.0 Children With Disabilities

Notwithstanding any of the provisions to the contrary, children with disabilities shall be served pursuant to the provisions of 14 **DE Admin. Code** 925 922 through 929.

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## **12.0 Charter School Students**

12.1 A charter school may refer a student to a Consortium Discipline Alternative Programs pursuant to provisions of chapter 16 of Title 14 of the Delaware Code, subject to the conditions set forth in 14 Del.C. 505A(8).

12.2 To the extent applicable, a charter school placing a student in a Consortium Discipline Alternative Program shall be subject to the provisions of this regulation.

## **4213.0 Evaluation**

The Department of Education shall annually evaluate the effectiveness of the Consortium Discipline Alternative Programs using criteria that includes student demographic data, types of interventions employed, and prior versus subsequent behavioral and academic patterns, parent involvement, agency involvement and recidivism. Grantees shall compile and submit data based on uniform standards and format established by the Department.

**8 DE Reg. 1008 (01/01/05)**

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### **OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 618

### **Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)**

#### **618 School Safety Audit**

#### **A. Type of Regulatory Action Required**

Repeal of Existing Regulation

#### **B. Synopsis of Subject Matter of the Regulation**

The Secretary of Education intends to repeal 14 DE Admin. Code 618 School Safety Audit and replace it with a new regulation 621 District and School Emergency Preparedness Policy.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 5, 2009 to Susan K. Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

#### **C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation is being repealed and replaced by a new regulation 14 DE Admin. Code 621 District and School Emergency Preparedness Policy.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses the school safety audit not equity issues. The regulation is being repealed and replaced by a new regulation 14 DE Admin. Code 621 District and School Emergency Preparedness Policy.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is being repealed and replaced by a new regulation 14 DE Admin. Code 621 District and School Emergency Preparedness Policy.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is being repealed and replaced by a new regulation 14 DE Admin. Code 621 District and School Emergency Preparedness Policy.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The regulation is being repealed and replaced by a new regulation 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulation is being repealed and replaced by a new regulation 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The regulation is being repealed and replaced by a new regulation 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The regulation is being repealed and replaced by a new regulation 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy.

9. Is there a less burdensome method for addressing the purpose of the regulation? The regulation is being repealed and replaced by a new regulation 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The regulation is being repealed and replaced by a new regulation 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy.

## ~~618 School Safety Audit~~

### ~~1.0 Required School Safety Audit~~

~~Each school year every Delaware public school including Charter Schools and Alternative Schools shall conduct a School Safety Audit. Such audit shall be conducted using guidelines provided by the Department of Education. Districts and heads of charter schools shall ensure that a corrective plan of action to address identified needs is developed within sixty (60) days of the School Safety Audit. The corrective plan of action shall be made available to the Department of Education's Quality Review Team at the time of their visit.~~

~~8-DE-Reg-344 (8/1/04)~~

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 620

### Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)

## 620 School Crisis Response Plans

### A. Type of Regulatory Action Required

Repeal Existing Regulations

### B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to repeal 14 **DE Admin. Code** 620 School Crisis Response Plans and replace it with a new regulation 621 District and School Emergency Preparedness Policy.

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Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 5, 2009 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation is being repealed and replaced by a new regulation 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses the school safety audit not equity issues. The regulation is being repealed and replaced by a new regulation 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation is being repealed and replaced by a new regulation 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation is being repealed and replaced by a new regulation 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The regulation is being repealed and replaced by a new regulation 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulation is being repealed and replaced by a new regulation 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The regulation is being repealed and replaced by a new regulation 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The regulation is being repealed and replaced by a new regulation 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy.

9. Is there a less burdensome method for addressing the purpose of the regulation? The regulation is being repealed and replaced by a new regulation 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The regulation is being repealed and replaced by a new regulation 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy.

**620 School Crisis Response Plans****4.0 Required School Crisis Response Plan**

~~Every Delaware public school including Charter Schools and Alternative Program sites shall develop a School Crisis Response Plan and shall conduct at least one practice drill annually. Following practice drills, the districts and heads of charter schools shall ensure that the school safety teams conduct meetings to assess readiness and determine the effectiveness of the existing plans. School Crisis Response Plans shall be developed using guidelines provided by the Department of Education and shall be made available to the Department of Education's Quality Review Team at the time of their visit.~~

~~8-DE Reg. 344 (8/1/04)~~

**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 621

**Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)****621 District and School Emergency Preparedness Policy****A. Type of Regulatory Action Required**

New Regulation

**B. Synopsis of Subject Matter of the Regulation**

The Secretary of Education intends to adopt a new regulation 14 **DE Admin. Code** 621 Emergency Preparedness to replace 14 **DE Admin. Code** 618 School Safety Audit and 14 **DE Admin. Code** 620 School Crisis Response Plan which were repealed. This regulation incorporates the requirements for the school crisis plans as well as practice and auditing of the emergency preparedness plan.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 5, 2009 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

**C. Impact**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The new regulation addresses emergency preparedness not student achievement specifically.

2. Will the amended regulation help ensure that all students receive an equitable education? The new regulation addresses emergency preparedness and not the equity of an education specifically.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The new regulation addresses emergency preparedness which will help ensure that all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The new regulation addresses emergency preparedness not students' legal rights specifically.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation requires each school district and charter school to have a written policy on emergency preparedness.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for address the subject to be regulated will be placed in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The new regulation addresses emergency preparedness and will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the new regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no cost to the State and to the local school boards of compliance with the regulation.

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## 621 District and School Emergency Preparedness Policy

### **1.0 Definitions**

“Charter School” shall mean a charter school board established pursuant to Chapter 5 of Title 14 of the Delaware Code.

“District” shall mean a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14 of the Delaware Code.

“Emergency Preparedness Guidelines” means the Department of Education developed documents that outline the steps, processes, procedures, audits and actions a school, local school district or charter school shall use to develop a plan to respond to an emergency event or crisis situation, including a major communicable disease event such as a Pandemic Influenza Outbreak that may occur in the school community. These documents may be revised from time to time. The documents shall be available on the Department of Education website.

“School Safety Team” means the individuals identified in the district or charter school emergency preparedness or crisis response plan responsible for the planning and implementation of the plan at the school level or district level.

### **2.0 District and Charter School Written Policy Required**

2.1 Each school district and charter school shall have a written policy that outlines an emergency preparedness plan that is consistent with the Emergency Preparedness Guidelines. In addition, the district policy shall state how the emergency preparedness plan shall be implemented at each school within the district. The emergency preparedness plan shall be reviewed with students and staff annually.

2.2 The district policy shall describe how each school within the district shall plan and conduct at least one emergency event or crisis situation exercise annually. In addition, each district shall conduct at least one tabletop exercise on a major communicable disease event such as a Pandemic Influenza Outbreak every two years.

2.3 The charter school policy shall describe how the charter school will plan and conduct at least one emergency event or crisis situation exercise annually and at least one tabletop exercise on a major communicable disease event such as a Pandemic Influenza Outbreak every two years.

### **3.0 Reporting Requirements and Timelines**

3.1 Each public school district and charter school shall have an electronic copy of its current Emergency Preparedness policy on file with the Department of Education. In addition, following the practice exercise(s) outlined in 2.0 of this regulation, the district superintendent or designee, or charter school administrator shall document the practice exercise(s) and the school safety team(s) meeting(s) to assess readiness and determine the effectiveness of the existing plans. The documentation of such practice exercise(s) and School Safety Team meeting(s) shall be provided to the Department upon request.

3.2 Each school district and charter shall provide an electronic copy of the its Emergency Preparedness policy within thirty (30) days of any revision(s) regardless of whether said revisions were made as a result of changes to Federal, state or local law, regulations, guidance, policies or recommendations from the School Safety Team.

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# PROPOSED REGULATIONS

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 1105

### 1105 School Transportation

#### A. Type of Regulatory Action Required

Amendment to Existing Regulation

#### B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 1105 School Transportation.

The amendments include the following: 1) adds definitions; 2) updates and adds responsibilities for School District Superintendents/charter School Heads of School or their designated school transportation supervisors; 3) updates and adds conditions for school bus contractors; 4) describes school bus training courses; 5) adds qualifications and responsibilities of Certified Delaware School Bus Driver Trainers; 6) expands qualifications and responsibilities of school bus drivers and aides; 7) updates procedures for operating school buses; 8) updates funding procedures for districts and charter schools; 9) changes school bus replacement schedules; and 10) streamlines the non-public school parent stipend procedures.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 5, 2009 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses school transportation responsibilities and procedures not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses school transportation responsibilities and procedures not equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses school transportation responsibilities and procedures which can improve school transportation safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses school transportation responsibilities and procedures not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is the no additional cost to the State and to the local school boards of compliance with the regulation.

## 1105 School Transportation

### 1.0 Definitions:

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

**"504 Plan"** means a plan developed pursuant to requirements Section 504 of the Rehabilitation Act of 1973 to ensure that pupils with disabilities may receive accommodations and modifications as well as supplementary aids and services to ensure that their individual educational needs are met as defined in 14 **DE Admin. Code** 922.

**"Administrative Head of School"** means the chief or head individual in charge of the school.

**"Aide"** means a person assigned to assist one or more individual pupil(s) with special needs on a school bus; also known as "attendant"

**"Certified Delaware School Bus Driver (CDSBD) Trainer"** means a person certified by DOE who is qualified to instruct the minimum six (6) hour behind-the-wheel school bus training program.

**"Certified Delaware School Bus Driver (CDSBD) Training"** means a course of instruction as specified herein in which a school bus driver or applicant under the supervision of a CDSBD Trainer: 1) observes the CDSBD Trainer driving with pupils on board for a minimum of two hours, 2) drives a school bus without pupils for a minimum of two hours, and 3) drives a school bus with pupils for a minimum of two hours.

**"Charter School Heads of School"** means the Administrative Head of School or equivalent.

**"Commercial Drivers License or CDL"** means a license issued by the Division of Motor Vehicles in accordance with the requirements of 21 **Del.C.** Chapter 26, which authorizes an individual to drive a certain class of commercial motor vehicle.

**"Contractor"** means an individual or entity that enters into a contract with a district to provide school transportation services.

**"District"** means a local school district or School.

**"DMV"** means the Department of Motor Vehicles.

**"DOE"** means the Department of Education.

**"Guardian or Legal Guardian"** means an individual who legally has responsibility for the care and management of the student during the student's minority. The relationship is a legal one and shall be created by a court order signed by a judge, commissioner, or master of a court of competent jurisdiction.

**"Individualized Education Program" or "IEP"** means a written statement or plan developed by an assessment team for a child with a disability as defined in 14 **DE Admin. Code** 922.

**"Principal" or "Headmaster"** means the Administrative Head of School and includes but is not limited to Head of School, Administrator, Executive Director, or Charter Head.

**"Pupil"** means any child who attends a school; also known as student.

**"Relative Caregiver"** shall have the same meaning as used in 14 **Del.C.** §202.

**"School"** means public or nonpublic primary or secondary educational program, excluding homeschool.

**"School bus driver classroom training"** means the minimum 12-hour classroom training provided by DOE.

**"School Plant"** means all buildings and facilities located in the area of a school that are used by students or used to directly support the school.

# PROPOSED REGULATIONS

"State Board or SBE" means the State Board of Education of the State pursuant to 14 Del.C. §104.

"Superintendent" means the administrative head of the school district.

"Transportation Supervisor" means the person within the school district or charter school who is designated by the school district superintendent or charter school head of school to oversee school transportation operations.

## **4.0 2.0 Responsibilities of ~~Local Superintendents~~ School District Superintendents/Charter School Heads of School**

- 2.1 ~~Local District Superintendents or their designees shall assume the following responsibilities concerning the transportation of students:~~ Local School District Superintendents' and Charter School Heads of School or their designated school transportation supervisors' responsibilities concerning the transportation of pupils shall include but are not limited to the following:
- 2.1.1 ~~Implement state school transportation regulations. Local school disciplinary policies shall include pupil behavior and discipline on the school bus.~~
  - 2.1.2 Define and coordinate changes to school transportation operations impacting local district budget allocations with the Department of Education.
  - 2.1.3 Provide resource material and encourage teachers to include instruction in school bus passenger safety in the school curriculum.
  - 2.1.4 Provide for close and continuous supervision of the unloading and loading zones on or near the school plant grounds, and ~~of the~~ during all emergency drills.
  - 2.1.5 Provide supervision for those ~~students~~ pupils whose bus schedules require them to arrive at school before classes begin and remain after classes terminate.
  - 2.1.6 Promote public understanding of, and support for the district's ~~school~~ transportation program.
  - 2.1.7 Assume prime responsibility for ~~student pupil~~ conduct and ensure pupil behavior and discipline on the school bus are included in district disciplinary policies.
  - 2.1.8 Promote well trained and informed drivers and aides by sharing information regarding law, regulation or operational changes and establishing an annual refresher/training program. Such a program may be limited to written updates and notices. When applicable and available, districts shall ensure that each school bus driver and aide who performs their duties at any time during a school year in their district completes an annual in-service training program and maintain documentation of completion at their districts.
  - 2.1.9 Attend State school transportation supervisor meetings and professional development programs.
  - 2.1.10 Submit DOE-required transportation reports in a timely manner.
  - 2.1.11 Inform contractors, school bus drivers and aides of district/school policies.
  - 2.1.12 Monitor and ensure compliance with all DOE approved transportation contracts.
  - 2.1.13 Ensure that all drivers and aides within their district have successfully completed the required criminal background checks and met all the qualifications requirements contained within this regulation.
  - 2.1.14 Provide evacuation instruction to all school bus riders and conduct two (2) evacuation drills for them, one prior to October 31 and another before March 31 each year. A report shall be submitted to DOE certifying the dates the drills were held.
  - 2.1.15 Ensure that prior to each departure, each pupil transported on an activity or field trip in a school bus be instructed in safe riding practices and on the location and operation of emergency exits.

## **2.0 3.0 Conditions for School Bus Contractors**

- 3.1 School Bus Contractors shall agree to the following conditions in their contracts:
- ~~2.4~~ 3.1.1 Follow all applicable federal, state, and local school bus regulations and policies.
  - ~~2.2~~ 3.1.2 Communicate effectively with the district transportation supervisor.

- ~~2-3~~ 3.1.3 Dismiss a school bus driver or aide from performing duties on a contracted school bus route when it can be shown that the driver or aide is not satisfactorily performing driver or aide tasks. District transportation supervisors may restrict a driver or aide from operating in their school district system.
- ~~2-4~~ 3.1.4 Pay drivers and aides and provide substitute drivers and aides.
- 3.1.5 Supervise all employees to ensure they are in compliance with all school and transportation laws, regulations, and contractual obligations.
- 3.1.6 Ensure that all employees have completed the necessary State Bureau of Investigation fingerprinting and qualify under the laws and regulations for their respective positions as either a driver or an aide.

## **4.0 School Bus Training Courses**

### **4.1 Driver Training Course**

- 4.1.1 Pursuant to 21 Del.C. §2708, the Department of Education shall develop and provide a Driver Training Course for applicants to gain the necessary knowledge and skills for a school bus driver. Nothing contained herein shall prevent DOE from contracting outside services to provide the required training.
- 4.1.2 The Driver Training Course shall include a minimum of twelve (12) hours of school bus driver classroom training and six (6) hours of training aboard a school bus with a CDSBD Trainer.
- 4.1.2.1 The Driver Training Course shall include instruction and a test covering at a minimum the following topics:
- 4.1.2.1.1 Motor Vehicle Laws;
  - 4.1.2.1.2 Department of Education and State Board Regulations;
  - 4.1.2.1.3 School Bus Driver Responsibilities; and
  - 4.1.2.1.4 School Bus Operating Procedures:
    - 4.1.2.1.4.1 Loading and unloading children, including the safe operation of stop signal devices, external mirror systems, flashing lights and other warning and passenger safety devices required for school buses by State or Federal law or regulation;
    - 4.1.2.1.4.2 Emergency exits and procedures for safely evacuating passengers in an emergency;
    - 4.1.2.1.4.3 State and Federal laws and regulations related to safely traversing highway rail grade crossings;
    - 4.1.2.1.4.4 Vehicle Control;
  - 4.1.2.1.5 School Bus Aide Responsibilities;
  - 4.1.2.1.6 Defensive Driving and Accidents;
  - 4.1.2.1.7 School Bus Emergencies;
  - 4.1.2.1.8 First Aid;
  - 4.1.2.1.9 Child Behavior and Pupil Management;
  - 4.1.2.1.10 Transporting Exceptional Children.

### **4.2 CDSBD Trainer Instructor Course**

- 4.2.1 Pursuant to 21 Del.C. §2708, the Department of Education shall develop and provide a Certified Delaware School Bus Driver Trainer Instructor Course for applicants to gain the necessary knowledge and skills and establish competence to be a CDSBD Trainer to instruct the CDSBD Training. The course areas covered shall include, at a minimum, techniques for instruction and those topics covered in the driver training course.

## **5.0 Qualifications and Responsibilities of Certified Delaware School Bus Driver Trainers (CDSBD Trainers)**

- 5.1 The Department of Education shall have the authority pursuant to this regulation to oversee the CDSBD Trainer program, certify the CDSBD Trainers, and determine additional requirements, if needed.

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## 5.2 General Prerequisites

- 5.2.1 Certified Delaware School Bus Driver Trainers (CDSBD Trainers) shall be leaders who display and demonstrate good school bus driving techniques.
- 5.2.2 CDSBD trainers shall display the ability to maintain good pupil conduct on their bus
- 5.2.3 CDSBD trainers shall maintain a good working rapport with fellow drivers, school staff, parents and students.

## 5.3 Initial Requirements/Qualifications

- 5.3.1 CDSBD trainers shall have a current and valid CDL with "S" endorsement. CDSBD trainers shall have held such license for the past 3 years and shall have actively driven a school bus during this period.
- 5.3.2 CDSBD trainers shall not have more than three (3) points in the past three years on their driving record at the time of application.
- 5.3.3 CDSBD trainers shall have had experience operating at least a sixty-six (66) passenger school bus.
- 5.3.4 Prior to obtaining certification or recertification, a CDSBD trainer shall be recommended for certification by the employer and district Transportation Supervisor as follows:
  - 5.3.4.1 Public School
    - 5.3.4.1.1 Contractor employee - recommended by the contractor and district Transportation Supervisor that has the candidate's records.
    - 5.3.4.1.2 Owner/Operator - recommended by district Transportation Supervisor having the candidate's driving records.
    - 5.3.4.1.3 District employed driver - recommended by the district Transportation Supervisor.
  - 5.3.4.2 Nonpublic School, excluding homeschools
    - 5.3.4.2.1 Contractor employee - recommended by the contractor and nonpublic school administrator.
    - 5.3.4.2.2 School employee - recommended by the nonpublic school administrator.
- 5.3.5 Shall satisfactorily complete a course of instruction provided by the Department of Education.

## 5.4 Duties and Responsibilities:

- 5.4.1 CDSBD trainers shall follow all regulations that pertain to school transportation including but not limited to properly driving a school bus and properly loading and unloading students.
- 5.4.2 CDSBD trainers shall be available at scheduled times to work with driver applicants.
- 5.4.3 CDSBD trainers shall assume the responsibility for covering the material required in CDSBD Training.
- 5.4.4 CDSBD trainers shall exercise good judgment and patience with the driver applicants.
- 5.4.5 CDSBD trainers shall be fair and reasonable in judging a person's ability to develop into a safe school bus driver.
- 5.4.6 CDSBD trainers shall work with the driver applicants to ensure that the training evaluation forms are completed properly by the trainer and applicant prior to submittal to the Transportation Supervisor.
- 5.4.7 CDSBD trainers shall certify to the district Transportation Supervisor that the applicant has met the requirements that have been established to comply with the CDSBD Training.
- 5.4.8 CDSBD trainers shall agree to assist district Transportation Supervisor in reevaluation of drivers.
- 5.4.9 CDSBD trainers shall inform district Transportation Supervisor of any observed changes in traffic patterns of routing locations that may pose a safety hazard.
- 5.4.10 CDSBD trainers shall attend and successfully complete any additional training required by DOE.
- 5.4.11 Failure to comply with any of the duties and responsibilities above may result in a Certified Delaware School Bus Driver Trainer not being certified or recertified.

## 5.5 Annual Recertification

- 5.5.1 All Certified Delaware School Bus Driver Trainers (CDSBD Trainers) shall attend an annual recertification class (minimum 4-hours) to maintain their qualifications to train driver applicants.
- 5.5.2 At the time of submittal of applications for recertification, the CDSBD Trainer shall have no more than three (3) points on their driving record.
- 5.5.3 A Certified Delaware School Bus Driver Trainer (CDSBD Trainer), who was not able to recertify for the current year, may apply and be reinstated upon DOE approval and attending the annual recertification class for the upcoming year effective July 1 of that year.

## 5.6 Denial of CDSBD Trainer Certificate

- 5.6.1 The DOE may refuse to issue the CDSBD Trainer certificate if the applicant does not meet the requirements of this regulation or would otherwise be unable to complete the duties required.

## 5.7 Revocation

- 5.7.1 The DOE may revoke a CDSBD Trainer certificate under the following circumstances:

- 5.7.1.1 if the CDSBD Trainer fails to meet any requirements of this regulation or the DMV regulations regarding "S" endorsements or school transportation;
- 5.7.1.2 the CDSBD Trainer has violated any of the regulations regarding student transportation;
- 5.7.1.3 the CDSBD Trainer fails to deliver the training as specified by DOE;
- 5.7.1.4 the CDSBD Trainer fails to maintain a valid license and "S" endorsement;
- 5.7.1.5 the CDSBD Trainer is terminated from employment from the district or contractor for cause or had their contract terminated for cause;
- 5.7.1.6 any other action by the CDSBD Trainer that would not be in the best interest of student transportation.

## 5.8 Right to Hearing

- 5.8.1 If the application is denied or the CDSBD Trainer certificate is revoked, the individual shall have the right of appeal to the Secretary but in such appeal shall be required to submit necessary evidence to show cause why approval should be granted.
- 5.8.2 The Department shall give written notice to the applicant of the denial or revocation and the reasons therefore. The notice of denial shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Secretary or designee within twenty (20) calendar days.
- 5.8.3 Hearings shall be conducted in accordance with the DOE's Hearing Procedures and Rules. The burden of proof shall be upon the applicant in a denial hearing and upon the DOE in a revocation proceeding using the preponderance of evidence standard.

## **3-0 6.0 Qualifications and Responsibilities of School Bus Drivers**

Local school districts shall have a policy concerning the responsibilities of school bus drivers which, at a minimum, includes the following:

- ~~3.1 A statement that the school bus driver is in full charge of the bus and pupils, has the authority of a classroom teacher and is responsible for the health, safety, and welfare of each passenger.~~
- ~~3.2 Statements listing the following specific responsibilities of the bus driver:
  - ~~3.2.1 Operate the school bus in a safe and efficient manner.~~
  - ~~3.2.2 Conduct pre trip and post trip checks on the vehicle.~~
  - ~~3.2.3 Establish and maintain rapport with passengers.~~
  - ~~3.2.4 Maintain discipline among passengers.~~
  - ~~3.2.5 Meet emergency situations effectively.~~
  - ~~3.2.6 Communicate effectively with district and school staff.~~
  - ~~3.2.7 Maintain effective contact with the public.~~
  - ~~3.2.8 Complete reports as required by the state or school district.~~
  - ~~3.2.9 Complete required training programs satisfactorily.~~
  - ~~3.2.10 Refrain from using profane or indecent language or tobacco while on duty.~~~~

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- ~~3.2.14 Dress appropriately.~~
- ~~3.2.12 Pickup and drop-off students at designated stops.~~
- ~~3.2.13 Submit to periodic random drug and alcohol testing and be subject to actions specified in the **Delaware Code** and in federal requirements.~~
- ~~3.2.14 Report suspected cases of child abuse to the school principal or designated official.~~
- ~~3.2.15 Notify the district transportation supervisor of any school bus accident.~~
- 3.3 ~~A statement requiring a report of a physical examination on forms designated by the Department of Education.~~
- 6.1 School bus drivers shall meet the qualification requirements of all applicable laws, Title 21, Division of Motor Vehicles Regulations, and this regulation.
- 6.2 Initial qualification.  
An applicant shall satisfactorily complete the School bus driver classroom training. The School bus driver classroom training shall remain valid toward initial qualification for a period of one year. Additional requirements shall include:
- 6.2.1 Pre-employment drug test;
- 6.2.2 Child protective registry check;
- 6.2.3 Criminal background affidavit;
- 6.2.4 State Bureau of Investigation fingerprinting for state and Federal Bureau of Investigation criminal background checks;
- 6.2.5 Delaware school bus driver physical with TB screening; and
- 6.2.6 CDSBD Training.
- 6.3 Out-of-state licensed school bus drivers shall meet the same requirements for qualification for an "S" endorsement as a driver with a Delaware license listed in 21 Del.C. §2708(b)(7) regarding criminal convictions and complete and provide to the district transportation supervisor:
- 6.3.1 Pre-employment drug test;
- 6.3.2 Child protective registry check
- 6.3.3 Criminal background affidavit;
- 6.3.4 State Bureau of Investigation fingerprinting for state and Federal Bureau of Investigation criminal background checks;
- 6.3.5 Delaware school bus driver physical with TB screening;
- 6.3.6 School bus driver classroom training;
- 6.3.7 CDSBD Training; and
- 6.3.8 Past five years driving record from the state where licensed and provide annual updates.
- 6.4 Reinstatement of school bus drivers
- 6.4.1 Drivers with an "S" endorsement who have not actively driven for two or more years shall complete the following requirements:
- 6.4.1.1 Pre-employment drug test (see paragraph 24.5 below);
- 6.4.1.2 Child protective registry check;
- 6.4.1.3 Criminal background affidavit;
- 6.4.1.4 State Bureau of Investigation fingerprinting for state and Federal Bureau of Investigation criminal background checks;
- 6.4.1.5 Delaware school bus driver physical with TB screening (if needed);
- 6.4.1.6 School bus driver classroom training; and
- 6.4.1.7 CDSBD Training.
- 6.4.2 Drivers with an "S" endorsement who have not actively driven for a period more than one and less than 2 years shall complete the following requirements:
- 6.4.2.1 Transportation Supervisor shall review the driver's records and a CDSBD Trainer shall evaluate the driver for two hours without pupils on board (using the CDSBD Training

- checklist) to determine what, if any, additional training is needed. The Transportation Supervisor shall note completion of the training required in the driver's records:
- 6.4.2.2 Pre-employment drug test; and
  - 6.4.2.3 Delaware school bus driver physical with TB screening (if needed).
- 6.4.3 Drivers requesting reinstatement of their "S" endorsement following mandatory suspension or revocation of over one year:
- 6.4.3.1 Pre-employment drug test;
  - 6.4.3.2 Child protective registry check;
  - 6.4.3.3 Criminal background affidavit;
  - 6.4.3.4 State Bureau of Investigation fingerprinting for state and Federal Bureau of Investigation criminal background checks ;
  - 6.4.3.5 Delaware school bus driver physical with TB screening (if needed);
  - 6.4.3.6 School bus driver classroom training;
  - 6.4.3.7 CDSBD Training;
  - 6.4.3.8 Successfully retake required written tests for CDL and "S" endorsement with DMV;
  - 6.4.3.9 Successfully retake Skills test with DMV; and
  - 6.4.3.10 Successfully retake Road test with DMV
- 6.5 When applicable and available, school bus drivers may be required to complete annual district-provided in-service training programs
- 6.6 Districts shall have a policy concerning the responsibilities of school bus drivers which, at a minimum, includes the following:
- 6.6.1 A statement that the school bus driver is in full charge of the bus and pupils, has the authority of a classroom teacher and is responsible for the health, safety, and welfare of each passenger.
  - 6.6.2 Statements listing at a minimum the following specific responsibilities of the bus driver:
    - 6.6.2.1 Operate the school bus in a safe and efficient manner at all times.
    - 6.6.2.2 Conduct thorough pre-trip and post-trip checks on the vehicle to ensure that the vehicle and safety equipment is operational, that no child is left on board the bus and that the vehicle is clean and secure.
    - 6.6.2.3 Establish and maintain rapport with passengers.
    - 6.6.2.4 Maintain discipline among passengers.
    - 6.6.2.5 Meet emergency situations effectively.
    - 6.6.2.6 Communicate effectively with district and school staff, parents and students.
    - 6.6.2.7 Maintain effective contact with the public.
    - 6.6.2.8 Complete reports as required by the state or District.
    - 6.6.2.9 Complete required training programs satisfactorily.
    - 6.6.2.10 Refrain from using profanity, indecent language or tobacco while on duty.
    - 6.6.2.11 Dress appropriately, as defined by District policy.
    - 6.6.2.12 Pick up and drop off pupils only at designated stops.
    - 6.6.2.13 Submit to periodic random drug and alcohol testing and be subject to actions specified in the Delaware Code and in federal requirements.
    - 6.6.2.14 Report suspected cases of child abuse to the school principal or designated official.
    - 6.6.2.15 Immediately notify the Transportation Supervisor of any school bus accident after ensuring the safety of the pupils.
    - 6.6.2.16 Prior to each departure, instruct each pupil transported on an activity or field trip in a school bus in safe riding practices and on the location and operation of emergency exits.
- 6.7 Perform other duties as assigned by the Transportation Supervisor or designee.
- 6.8 Criminal Background Checks

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- 6.8.1 The drivers shall present themselves to the State Bureau of Identification personnel at one of the Delaware State Police Troops that processes such criminal background checks or State Bureau of Investigation and follow these procedures:
- 6.8.2 For application of an S-endorsement or public school related employment or as part of the contract for services, the driver shall sign a Release for Criminal Background Check Information form approved by the DOE. The release shall allow the DOE to share the information received with the DMV.
- 6.8.3 The driver shall cooperate in all respects with this criminal background check process. On completion of the procedure, the driver will be given a Verification Form of Processing by the State Bureau of Identification, which shall be shown to the District where the driver is seeking employment or contracted services.
- 6.8.4 The driver shall request the State Bureau of Identification send an original version of the criminal background check to the DOE, and shall obtain a receipt to return indicating the criminal background check is in process to the district where seeking employment or contracted services.
- 6.8.5 DOE shall review the criminal background reports received and perform a preliminary review to determine the reports that have no state or federal criminal history record. DOE shall forward all other reports to DMV for determination of eligibility for a "S" endorsement pursuant to Title 21 (2708).

## ~~4.0~~ **7.0 Qualifications and Responsibilities of School Bus Aides**

- ~~4.1~~ 7.1 Qualifications for School Bus Aides include the following and shall apply to all new applicants and for any person whose employment as an aide has lapsed for a period of over one year.
  - ~~4.1.1~~ 7.1.1 Be at least 18 years of age.
  - ~~4.1.2~~ 7.1.2 Be fingerprinted to allow a criminal ~~history~~ background check at both state and federal level and meet the same requirements (pre licensing) specified for school bus drivers in the **Delaware Code**.
    - 7.1.2.1 The aides shall present themselves to the State Bureau of Investigation (SBI) personnel at one of the Delaware State Police Troops that possesses such criminal background checks or State Bureau of Investigation.
    - 7.1.2.2 The aide shall request the original completed background check be sent to the DOE and upon completion, obtain a receipt to return to the district where seeking employment or contracted services.
    - 7.1.2.3 The candidate for aide shall sign a Release for Criminal Background Check Information form approved by the DOE. The release shall allow the DOE to share the information received with the district where seeking employment or contracted services.
    - 7.1.2.4 DOE shall forward the background reports to the districts for determinations of eligibility.
  - ~~4.1.3~~ 7.1.3 File with the district transportation supervisor a notarized affidavit (the same as the school bus driver affidavit) attesting to acceptable criminal history pending an official state and federal criminal record report.
  - ~~4.1.4~~ 7.1.4 Submit to the federal drug and alcohol testing procedures established for school bus drivers.
  - 7.1.5 Complete the school bus driver classroom training and other district required training programs satisfactorily.
- 7.2 When applicable and available, school bus aides may be required to complete annual district-provided in-service training programs.
- ~~4.2~~ 7.3 Local school districts shall have a policy concerning school bus aides which, at a minimum, lists the following responsibilities:
  - ~~4.2.1~~ 7.3.1 Assist in loading and unloading of ~~students~~ pupils, including lift operation.
  - ~~4.2.2~~ 7.3.2 Ensure that ~~students~~ pupils and equipment are properly ~~strapped in seats~~ secured to ensure safe transport. Adjust, fasten, and release restraint devices for ~~students~~ pupils and equipment, as required. ~~Monitor~~ Continually, monitor overall safety of ~~students~~ pupils and equipment.

- ~~4.2.3~~ 7.3.3 Ensure that all ~~students~~ pupils remain seated at all times.
- ~~4.2.4~~ 7.3.4 Assist the driver during unusual traffic conditions; act as a lookout ~~if necessary when bus must be backed~~ when backing the bus.
- ~~4.2.5~~ 7.3.5 Assist the driver in the enforcement of all state and school district bus safety regulations.
- ~~4.2.6~~ 7.3.6 Perform record keeping tasks related to ~~students~~ pupil attendance and bus assignment.
- ~~4.2.7~~ 7.3.7 Monitor and report ~~student~~ pupil misbehavior according to established procedure.
- ~~4.2.8~~ 7.3.8 Assist the driver in keeping the interior of the bus clean.
- 7.3.9 Assist the driver with the post-trip inspection to ensure no pupil is left on board the bus.
- ~~4.2.9~~ 7.3.10 Assist ~~students~~ pupils with disabilities as prescribed in the pupil's IEP and with personal needs associated with their disabilities.
- ~~4.2.10~~ 7.3.11 Assist in bus evacuation drills.
- ~~4.2.11~~ 7.3.12 Work cooperatively with all school personnel and parents, guardians and Relative Caregivers.
- ~~4.2.12~~ 7.3.13 Perform other duties as assigned by the district transportation supervisor or designee.
- 6 DE Reg. 643 (11/1/02)**
- 9 DE Reg. 404 (9/1/05)**

#### **5-9 8.0 Student Pupil Conduct on School Buses**

- 8.1 ~~School~~ Districts shall have a policy concerning the behavior of ~~students~~ pupils on school buses that shall, at a minimum, contain the following rules which if not followed may result in the suspension or denial of bus riding privileges:
- ~~5.1~~ 8.1.1 Obey the driver promptly, and be courteous to the driver and to fellow ~~students~~ pupils. ~~Students Pupils~~ are to conduct themselves while on the bus in such a way that ~~it will~~ they shall not distract the driver from ~~the job of~~ driving tasks.
- ~~5.2~~ 8.1.2 Be at their bus stop on time or as required by their District for pickup.
- ~~5.3~~ 8.1.3 Wait in a safe manner for the bus on the sidewalk or shoulder, not the roadway.
- ~~5.4~~ 8.1.4 Keep a safe distance from the bus while it is in motion.
- ~~5.5~~ 8.1.5 Enter the bus when directed to by the bus driver or aide without crowding or disturbing others and occupy their seats immediately.
- ~~5.6~~ 8.1.6 Get on or off the bus only when it is stopped.
- ~~5.7~~ 8.1.7 Remain seated and facing forward. ~~No student shall occupy a position in the driver area in front of a stanchion, barrier, or white floor line that may distract the driver's attention or interfere with the driver's vision.~~
- ~~8.1.8~~ No student shall occupy a position in the driver area in front of a barrier or white floor line that may distract the driver's attention or interfere with the driver's vision.
- ~~5.8~~ 8.1.9 Stay out of the driver's seat. Also, unnecessary conversation with the driver is prohibited while the bus is in motion.
- ~~5.9~~ 8.1.10 Follow highway safety practices in accordance with the Motor Vehicle Laws of the State of Delaware ~~and walk by walking~~ on the side of the road facing traffic when going to or from the bus or bus stop along the highway. ~~Before crossing the road to board the bus or after being discharged from the bus cross only upon an audible clearance signal from the driver.~~
- ~~8.1.11~~ Before crossing the road to board the bus cross only upon an audible clearance signal from the driver/aide.
- ~~5.10~~ 8.1.12 Do not cross the road until it is clear of all traffic or ~~that~~ when all traffic has come to a complete stop and then walk in front of the bus beyond the crossing control arm and far enough to be seen by the driver at all times.
- ~~8.1.13~~ For unloading, walk at least 10 feet away from the side of the bus and remain in view of the driver. For those crossing the road, walk to a position at least 10 feet in front of the right corner of the bumper and away from the bus. After looking in all directions and being told to begin crossing by

- the driver or aide, walk to the left edge of the school bus, look for traffic again in all directions, and wait to be told to cross by the driver/aide.
- 5.14 8.1.14 Observe classroom conduct when on the bus.
- 5.12 8.1.15 Do not ~~call out to passers-by or~~ open the bus windows without permission from the driver, ~~nor~~ extend ~~head or arms~~ any body part out of the windows or call out to passers-by.
- 5.13 8.1.16 Do not leave the bus without the driver's consent, except on arrival at their regular bus stop or at school.
- 5.14 8.1.17 Keep the bus clean, sanitary, and orderly and do not damage or abuse the equipment.
- 5.15 8.1.18 Do not smoke, use profanity ~~or~~, eat or drink on the bus.
- 5.16 8.1.19 Do not throw articles of any kind ~~inside, out, or~~ around the bus or out of the bus windows.
- 5.17 8.1.20 Other forms of misconduct that ~~will~~ shall not be tolerated on the bus and at bus stops are acts such as, but not limited to, bullying, indecent exposure, obscene gestures, spitting, and others actions that may be addressed in the ~~school~~ district code of conduct.

## **6.0 9.0 Procedures for Operating Buses**

- 9.1 Each ~~school district~~ District shall establish procedures that adopt at a minimum the following procedures in this section for the operation of their school buses:
- 6.4 9.2 No person other than a pupil, teacher, school official, aide, driver in training or substitute driver shall be permitted to ride on a school bus while transporting pupils. Exceptions may be made for parents, guardians and Relative Caregivers involved in Department of Education educational programs that provide for transportation and others approved by the ~~district~~ Transportation ~~S~~Supervisor.
- 6.2 9.3 The driver shall maintain a schedule in the bus and shall at all times adhere to it. Drivers shall not be required to wait for pupils unless they can be seen making an effort to reach the bus stop.
- 6.3 9.4 The driver shall maintain discipline on the bus, and shall report cases of disobedience or misconduct to the ~~proper~~ designated school officials. No pupils may be discharged from the bus for disciplinary reasons except at the home or school. The principal or designated school official shall be notified of such action immediately. Any change to the action taken by the driver or any further disciplinary action to be taken is the responsibility of the principal or designated school official.
- 6.4 9.5 Pupils shall have definite places to ~~get on and leave~~ board and exit the bus, ~~and~~. Pupils should not be allowed to leave the bus at any place other than the regular stop without written permission from their parents, guardians or Relative Caregiver and approval by the principal or designated school official, ~~except in cases of emergency~~. Districts or schools may adopt a more restrictive policy.
- 6.5 9.6 Buses shall be brought to a full stop and properly positioned before pupils are allowed to ~~get on or off~~ board and exit the bus. Pupils are not permitted to ride outside or in any hazardous location in the bus including the area ahead of the ~~stanchions, barriers,~~ or white floor line designating the driver area.
- 6.6 9.7 Buses shall not stop near the crest of hills, on curves, or on upgrades or downgrades of severe inclination. When stopped for the purpose of receiving or discharging pupils, the bus shall always be stopped on the right side of the road and as far off the paved or main traveled portion of the highway as the condition of the shoulder permits and parallel to the main traveled portion of the highway.
- 6.7 9.8 Pupils who must cross the road to board the bus or after leaving the bus shall cross at a distance in front of the bus and beyond the crossing control arms so as to be clearly seen by the driver and only upon an audible clearance by the driver. The driver shall ~~attempt to~~ signal pupils to cross by instructions through the external speaker of the public address system.
- 6.8 9.9 All loading and unloading of pupils shall be made from the service door. The rear exit door is not to be used except in cases of emergency or emergency drills. No object shall be placed in the bus that restricts the passage to the emergency door or other exits.
- 6.9 9.10 No one but the driver shall occupy the driver's seat. ~~Pupils shall remain behind the white floor line.~~
- 6.10 9.11 ~~Seats may~~ Pupils shall be assigned to ~~pupils~~ seats by the driver, subject to the approval of a ~~school official~~ the Transportation Supervisor.

- ~~6-11~~ 9.12 The doors of the bus shall be kept closed and in the latched position while the bus is in motion, ~~and pupils shall not put their head or arms out of open windows.~~
- ~~6-12~~ 9.13 When the bus is stopped on school grounds, ~~students~~ pupils are aboard, and the motor is running, the transmission shall be in neutral (clutch disengaged) and the parking brake set. While on school grounds, drivers shall not leave their seat while the motor is running or leave the key in the ignition switch.
- ~~6-13~~ 9.14 Fuel tanks shall not be filled while the engine is running or while ~~pupils are~~ anyone is in the bus.
- ~~6-14~~ 9.15 Weapons of any kind are not permitted on a school bus.
- ~~6-15~~ 9.16 Animals are not permitted on school buses; however, a service animal is permitted if a physician certifies that it is required or it is part of the pupil's IEP or 504 Plan.
- ~~6-16~~ 9.17 A school bus shall not be used for hauling anything that would make it objectionable for school use or unsafe for passengers.
- ~~6-17~~ 9.18 Band instruments, shop projects and other school projects shall not be permitted on the bus if they interfere with the driver or other passengers. The aisle, exits, and driver's vision shall not be blocked.
- ~~6-18~~ 9.19 Bus stops on roadways with three or more lanes (with oncoming traffic) must be made on the right side of the road. ~~Students~~ Pupils shall not be required to cross more than two lanes of traffic when entering or leaving the bus.
- ~~6-19~~ 9.20 Headlights or daytime running lights shall be on at all times when the bus is in motion.
- ~~6-20~~ 9.21 On the bus route every effort should be made to load children before turn arounds are made and unload them after the turn around is made.
- ~~6-21~~ 9.22 Backing of school buses is prohibited, except in unusual circumstances:
- ~~6-21.1~~ 9.22.1 A school bus shall not be driven backwards on school grounds unless an adult is posted outside the bus to guard the rear of the bus. The driver and adult shall agree on signals to be used for backing.
- ~~6-21.2~~ 9.22.2 When backing is unavoidable at other locations, extreme caution ~~must~~ shall be exercised by the bus ~~operator~~ driver and an outside adult observer ~~should be used if possible outside the bus shall be used if available. The driver and observer shall agree on signals to be used for backing.~~
- 3 DE Reg. 942 (1/1/00)**  
**9 DE Reg. 404 (9/1/05)**

## ~~7-9~~ **10.0 Accident Reports**

- 10.1 All drivers or contractors shall complete accident reports and submit them to the ~~district person in charge of transportation~~ Transportation Supervisor in order to assure accurate information pertaining to school bus accidents.
- ~~7-1~~ 10.2 The following information shall be included on all school bus accident reports and be maintained in the ~~d~~District transportation files:
- ~~7-1.1~~ 10.2.1 A description, preferably using diagrams, of the damage to each vehicle in addition to estimates of damage costs.
- ~~7-1.2~~ 10.2.2 A description of all personal injuries.
- ~~7-1.3~~ 10.2.3 A list of passengers and witnesses.
- ~~7-1.4~~ 10.2.4 Name, address and telephone number of the driver.
- 10.2.5 If available, the school bus seating chart.
- ~~7-1.5~~ 10.2.6 Follow up information, such as the actual cost of repairs, should be added to the accident report wherever it is filed; i.e., in federal, state or local offices, so that the record of the accident is completed. Other pertinent information relating to the accident that should be added later, if the information is readily available, includes:
- 10.2.6.1 Disposition of any litigation.
- 10.2.6.2 Disposition of any summonses.

# PROPOSED REGULATIONS

- 10.2.6.3 Net effects of all personal injuries sustained, including medical care given, physician's fees, hospital expenses, etc.
- 10.2.6.4 Amount of property damage other than to vehicles involved.
- 10.2.6.5 Any corrective actions taken against the school bus driver, e.g., training, suspension, or dismissal.
- 10.2.6.6 A summation of the driver's total accident record so that each completed report form will contain a listing of the total number of accidents that the driver has had.

## 3 DE Reg. 942 (1/1/00)

### ~~8-0~~ 11.0 Transportation Benefits

- 11.1 Transportation benefits shall be provided for pupils in grades K to 6 whose legal residences are one (1) mile or more from the public schools to which they would normally be assigned by the ~~d~~District administrations and for pupils in grades 7 to 12 whose legal residences are two (2) miles or more from the public schools to which they would normally be assigned by the ~~d~~District administrations. Requests for otherwise ineligible transportation benefits due to unique hazards shall be processed according to this regulation.
- ~~8-4~~ 11.2 For the purpose of these regulations, the "legal residence" of the pupil is deemed to be the legal residence of the parent(s), legal guardian(s), or Relative Caregiver as described in 14 **Del.C.** §202(e)(3). Daycare facilities may be designated as a pupil's residence for pickup and drop off.
- ~~8-2~~ 11.3 To determine pupil eligibility for transportation benefits, measurement shall be by the most direct route provided by a public road or public walkway. The measurement shall be from the nearest point where a private road or walkway connects the legal residence of the pupil with the nearest public entrance of the school building to which the pupil is normally assigned by the ~~school~~ ~~d~~District administration.
- ~~8-3~~ 11.4 All school bus routes shall be measured from the first pickup point to the respective schools served in the approved sequence, and then by the most direct route back to the first pick up point.
- ~~8-4~~ 11.5 Additional bus routes required after the opening of school shall be approved by the Department of Education and supported by evidence of need to include: enrollment number changes, descriptions of existing routes in the area of proposed additional service, the run times, and actual loads. A description of the proposed route shall also accompany the request.
- ~~8-5~~ 11.6 Transportation for eligible pupils may be provided from locations other than their legal residence provided that:
- ~~8-5-4~~ 11.6.1 Such pickup and discharge points as approved by the ~~d~~District administration are in excess of the relevant one and two mile limits from the school to be attended, and such transportation to be provided will be to the public school to which the pupil is assigned by the ~~d~~District administration.
- ~~8-5-2~~ 11.6.2 Such transportation to be provided be on the same bus and route to and from the school attended by the pupil (i.e. each ~~student~~ pupil is entitled to one seat on one bus) except that permission may be granted on a year by year basis by the ~~d~~District administration for eligible pupils to ride other buses if seats are available and does not create additional expense to the State.
- ~~8-5-3~~ 11.6.3 The limitation pertaining to "same bus and route" indicated above is not applicable to pupils attending ~~career~~ vocational technical schools or kindergartens operating one half day sessions.
- ~~8-6~~ 11.7 A spur to a bus route (where a bus leaves a main route) shall not be scheduled unless the one way distance is greater than ½ mile. ~~Requests for exception due to a unique traffic hazard from a parent, guardian or Relative Caregiver must be in writing, approved by the local school board, and submitted through the Chairman of the Unique Hazard Committee for review.~~
- ~~8-7~~ 11.8 ~~Students~~ Pupils otherwise ineligible to ride a bus may ride if a physician certifies that a ~~student~~ pupil is unable or should not walk from home to school and return.

11.9. Unless permitted as an exception by the General Assembly and in vocational technical school districts, each school in a local school district shall have a defined attendance area (not overlapping) for transportation. Charter schools shall provide the same level of transportation service as the school district in which it is located. Area bus stops may be used outside of the school district in which the charter school is located.

## 8 DE Reg. 541 (10/1/04)

### ~~44-0~~ 12.0 Unique Hazards

12.1 ~~Unique hazards are considered to be conditions or situations that expose the pedestrian to rare or uncommon traffic dangers. Individuals who desire to submit a request for exception to the transportation benefit criteria above because of a unique traffic hazard shall follow the procedures below. Unique hazards are considered to be conditions or situations that expose the pedestrian to rare or uncommon traffic dangers. This definition is not intended to include hazards representative of situations which may exist throughout the State.~~

~~44-4~~ 12.2 Procedures for handling Unique Hazards requests.

~~11.1.1~~ 12.2.1 When the request for relief originates with parents, guardians or Relative Caregivers of pupils affected or vested officials, such as State and local police representatives, Safety Council representatives, and legislators, it shall be presented in writing to the local school authorities.

~~44-4.1.1~~ 12.2.1.1 The local school administration or charter school shall make every effort to resolve problems identified by the parents, guardians and Relative Caregivers vested officials, or by the local district staff.

~~44-4.1.2~~ 12.2.1.2 If the problem cannot be resolved by the local school administration or charter school administration, the request shall be forwarded to the ~~local~~ district board of education or charter school board of directors for appropriate action. If the ~~local~~ district board of education or charter school board of directors has explored all of the local alternatives to resolve the problem without success, a request by board action shall be made to the Chairman of the Unique Hazards Committee (Education Associate for School Transportation).

~~44-2~~ 12.3 The request to the Unique Hazards Committee ~~must~~ shall include:

~~44-2.1~~ 12.3.1 The original request from the parents, guardians or Relative Caregivers, vested officials, or the district staff.

~~44-2.2~~ 12.3.2 A statement of the specific hazard and area involved including maps showing the specific location, points of concern and schools attended.

~~44-2.3~~ 12.3.3 Number and grades of children involved.

~~44-2.4~~ 12.3.4 School schedule and the time children would normally be walking to and from school in the area of concern.

~~44-2.5~~ 12.3.5 List any actions to resolve the problem taken by the ~~local~~ district school administration or charter school administration.

~~44-2.6~~ 12.3.6 List any actions to resolve the problem taken by the local district board of education or charter school board of directors.

~~44-2.7~~ 12.3.7 List any actions to resolve the problem taken by the town, the city or county.

~~44-3~~ 12.4 The Unique Hazards Committee ~~will~~ shall process the request and report its findings and recommendations to the Department of Education for their consideration and action. A copy of the report ~~will~~ shall also be forwarded to the ~~local~~ district board of education or charter school board of directors involved.

~~44-4~~ 12.5 The Unique Hazards Committee consists of representatives from the Department of Transportation; the New Castle County Crossing Guard Division; Delaware Safety Council; Traffic Control Section, the Delaware State Police; and the Department of Education Education Associate for ~~School Pupil~~ Transportation (~~Chairman~~ Chairperson).

~~44-5~~ 12.6 Unique Hazards Committee Recommendations Appeal Process

# PROPOSED REGULATIONS

~~41.5.4~~ 12.6.1 Appeals ~~to~~ of the Unique Hazards Committee recommendations approved by the State Department of Education ~~must~~ shall be in writing and from the ~~local~~ district board of education.

~~41.5.2~~ 12.6.2 The ~~local~~ district school board shall, before making an appeal, make every effort to resolve the problem. If, in the opinion of the ~~local~~ district board of education, reconsideration is needed by the Unique Hazards Committee, the appeal, along with pertinent information, should be forwarded to the ~~Chairman~~ Chairperson of the Unique Hazards Committee.

~~41.5.3~~ 12.6.3 The Unique Hazards Committee ~~will~~ shall submit to the State ~~Department~~ Board of Education its recommendations regarding the appeal for reconsideration by the ~~local~~ district board of education or charter school board of directors. A copy of the report will also be forwarded to the ~~local~~ district board of education or charter school board of directors involved.

## 9 DE Reg. 404 (9/1/05)

### ~~9.0~~ 13.0 Bus Capacities

~~9.1~~ 13.1 Bus capacities for children in ~~g~~Grades K to 6 shall be established by the manufacturer on the basis of 13 inches per child, and for Grades 7 to 12, ~~secondary pupils~~ the capacity shall be established on the basis of 15 inches per child.

~~9.2~~ 13.2 A mixture of the criteria ~~will~~ shall be used to plan loads when pupils come from both of the above groups.

~~9.3~~ 13.3 Actual bus loads may not exceed this guidance. Standees shall not be permitted under normal circumstances; however, exceptions may be made in emergency situations on a temporary basis.

### ~~40.0~~ 14.0 Loading and Unloading

Each school shall have a loading and unloading ~~deck~~ or area, rather than load or discharge passengers onto the street. On school grounds all other traffic is prohibited in the loading and unloading area during school bus loading and unloading operations.

### ~~42.0~~ 15.0 Contingency Plans

~~42.1~~ 15.1 Each ~~school~~ District shall have contingency plans for inclement weather, accidents, bomb threats, hostages, civil emergencies, natural disasters, and facility failures (environmental and water, etc.). These plans shall be developed in cooperation with all those whose services would be required in the event of various types of emergencies.

~~42.2~~ 15.2 The ~~school~~ Transportation ~~s~~Supervisor, school administrators, teachers, drivers, maintenance and service personnel, ~~students~~ pupils, and others shall be instructed in the procedure to be followed in the event of the contingencies provided for in the plans.

### ~~43.0~~ 16.0 Reimbursements for ~~School Bus Ownership and or Contracts~~ Transportation

16.1 For purposes of reimbursements under this section, Sschool buses may be either state owned and local school district operated, charter school owned and operated, or ~~contracted~~ contractor owned and operated under contract with the local school district or charter school.

~~43.1~~ 16.2 ~~Reimbursements for buses operated by the district shall be on the basis of the formula for district operated buses unless otherwise approved by the Department of Education. Reimbursement to the local school district for contracts or for school district owned or leased buses shall be made on the basis of a Department of Education formula approved by the State Board of Education. This formula shall take into consideration school bus cost and depreciation, fixed charges, operations, maintenance, driver and aide wages. Reimbursement shall be made only for transportation of eligible pupils and exceptions approved by the Department of Education and the State Board of Education.~~

~~43.1.4~~ 16.2.1 Drivers employed by the local school district shall be paid on the regular payroll of the local school district. When drivers are employed in a dual capacity there shall be strict accounting for salary division.

- ~~43-2~~ 16.3 Reimbursement for buses operated on contract shall be on the basis of the approved formula or of a bid if the amount ~~should be~~ is less.
- ~~43-2-4~~ 16.3.1 Contractors shall be paid regularly at the end of the month. The total contract shall be paid in ten (10) installments, with the first payment at the end of September or twenty (20) installments with the first payment on or about September 15th. For those school districts opening before September 1 and making ten (10) installments, payments may be made as early as thirty (30) days following the start of the school year with follow up monthly payments to be made no earlier than the date used for the first payment. For those school districts opening before September 1<sup>st</sup> and making twenty (20) payments, payments may be made as early as fifteen (15) days following the start of the school year with follow up monthly payments to be made no earlier than the dates used for the first two payments.
- ~~43-3~~ 16.4 Any transportation costs caused by grade reorganizations or pupil reassignments during the school term after October 1, other than the occupancy of a new school building, shall be at the expense of the local school district unless approved by the Department of Education.
- ~~43-4~~ 16.5 Bills unpaid from Transportation funding lines that have not been encumbered as of June 30, shall be the responsibility of the local school district.
- ~~43-5~~ Reimbursement to the local school district for contracts or for district owned or leased buses shall be made on the basis of a Department of Education formula approved by the State Board of Education. This formula shall take into consideration school bus cost and depreciation, fixed charges, operations, maintenance, driver and aide wages. Reimbursement shall be made only for transportation of eligible pupils and exceptions approved by the Department of Education and the State Board of Education.
- ~~43-6~~ 16.6 Contract allowances for buses when there are Emergency Days (forgiven by the Department of Education with the consent of the State Board of Education), Specially Declared Holidays or Strikes by Teachers.
- ~~43-6-1~~ 16.6.1 School bus contractors and school districts shall be paid the normal rate of pay as provided for in their contract, less the allowance for fuel, maintenance and administration. Driver (including layover allowance) and aide allowances shall be paid.
- ~~43-6-2~~ 16.6.2 School bus contractors and school districts with buses assigned to midday kindergarten or career technical trips shall be paid the normal rate of pay as provided for in their contract, less the allowance for fuel.
- ~~43-6-3~~ 16.6.3 The additional mileage allowance for contractor and school district buses ~~will~~ shall not include fuel and maintenance allowances.
- ~~43-6-4~~ 16.7 The Delmar School District shall be reimbursed on the basis of the additional days necessary to operate as a result of the agreement with the Wicomico County Board of Education for the Delmar, Maryland elementary schools.
- ~~43-7~~ 16.8 Fuel adjustments for local school districts shall be made in accordance with the State Budget Bill. When fuel adjustment additions are made, the school districts shall pay a lump sum for the number of days driven up to the date of the adjustment and the remainder shall be paid equally over the remaining months of the school year. For contract reductions, the adjustments shall be spread equally over the remaining months of the school year. Fuel adjustments for charter schools shall be made if provisions which are in accordance with the State Budget Bill are made. Additional funds shall only be provided up to the maximum allowance permitted to the charter school for that school year.
- 16.9 School transportation funding is contingent on school buses meeting State School Bus Standards and being operated in accordance with State and Federal laws and regulations.
- 7 DE Reg. 1546 (5/1/04)**  
**8 DE Reg. 541 (10/1/04)**  
**9 DE Reg. 404 (9/1/05)**

# PROPOSED REGULATIONS

## ~~44.0~~ 17.0 Transportation Formulas for ~~Public~~ Local School Districts Operating District, Lease, or Lease Purchase Buses

~~Items which are not on this list must be approved by the State Department of Education. Any purchase, commitment, or obligation exceeding the transportation allocation to the district is the responsibility of the district.~~

~~44.1~~ 17.1 A District shall not use transportation funds for items which are not on the following list without approval by the DOE. Any purchase, commitment, or obligation exceeding the transportation allocation to the District is the responsibility of the District. The following items may be used for the purpose of providing pupil transportation in accordance with the regulations of the Department of Education.

~~44.1.1~~ 17.1.1 Advertising including equipment, routes, supplies, and ~~employees~~ employment.

~~44.1.2~~ 17.1.2 Communication systems including two way radios, cellular phones, and AM-FM radio.

~~44.1.3~~ 17.1.3 Fuel including gasoline, diesel, propane, kerosene, storage tanks, pumps, additives, and oil.

~~44.1.4~~ 17.1.4 Leasing and rental including tools, equipment, storage facilities, buses, garage space, and office space.

~~44.1.5~~ 17.1.5 Office supplies and materials including computer hardware, computer software, data processing, maps, postage, printing, subscription, and measuring devices.

~~44.1.6~~ 17.1.6 Safety materials including audio visual aids, restraining vests, belts, safety awards, pins, patches, certificates, wheelchair ramps, wheelchair retainers, printing, handout materials, pamphlets, training materials, subscriptions, and bus seats.

~~44.1.7~~ 17.1.7 Salary and wages including attendants (aide) as approved by the Department of Education when required in a ~~student's~~ pupil's IEP, dispatchers, drivers, maintenance helpers, mechanics, mechanics helpers, office workers, secretarial, substitute drivers, supervisory (other than State supported supervisor or manager), and State provided employee benefits.

~~44.1.8~~ 17.1.8 Shop facilities including heat, electric, water, sewer, security, fences, lights, locks, guards, bus storage, janitorial supplies, brushes, mops, buckets, soap, tools, maintenance vehicles, grease, service vehicles, and work uniforms for maintenance staff.

~~44.1.9~~ 17.1.9 Sidewalks including construction of sidewalks, footbridges, etc. that would be offset in reduced busing costs in 5 years or less, with prior approval of Supervisors of Transportation and School Plant Planning.

~~44.2~~ 17.2 Special 01-60 state funds are provided to local school districts for training supplies. This account may also be used for reimbursements for state provided equipment and services.

~~44.3~~ 17.3 Examples of Programs Excluded from State Reimbursement:

~~44.3.1~~ 17.3.1 Extracurricular Field trips

~~44.3.2~~ 17.3.2 Transportation of pupils from one school to another for special programs (e.g., music festivals, ~~Christmas~~ Holiday programs, etc.)

~~44.3.3~~ 17.3.3 Transportation of pupils to and from athletic contests, practices, tutoring, band events, etc.

~~44.3.4~~ 17.3.4 Post secondary classes

~~44.3.5~~ 17.3.5 Federal programs

~~44.3.6~~ 17.3.6 Alternative school transportation when not using a shuttle concept that is as efficient as a shuttle concept.

~~44.3.7~~ 17.3.7 Choice school transportation outside of the local school district or outside of the attendance area of school that the bus normally serves.

~~44.3.8~~ 17.3.8 Charter school transportation (if being provided by a local school district) outside of the local school district.

## ~~45.0~~ 18.0 Transportation Allowances for Individuals

18.1 Requests for transportation allowances shall be made in writing to the Department of Education by local school districts with justification. This information is necessary in order for the Department to

determine a pupil's eligibility. The responsibility for establishing a claim for transportation allowances rests upon the district and claimant.

~~45.4~~ 18.2 All requests shall be signed by the parent, guardian or Relative Caregiver and certified by the superintendent, principal or the principal teacher of the school to be attended. In case of a car pool, only the driver shall be paid.

~~45.2~~ 18.3 Payments or reimbursements for transportation by private means shall be on the following basis:

~~45.2.1~~ 18.3.1 When adequate public services is are available, the public service rates shall be used.

~~45.2.2~~ 18.3.2 When public service is not available and it is necessary to provide transportation by private conveyance, the allowance shall be calculated at the prevailing state rate per mile for the distance from the home to the school or school bus and return twice a day, or for the actual distance traveled.

~~45.2.3~~ 18.3.3 Local School ~~D~~istricts shall maintain a monthly record of mileage travelled on a form provided by the Department of Education.

~~45.2.4~~ 18.3.4 Any exception or variation must be approved by the Department of Education.

**9 DE Reg. 404 (9/1/05)**

#### ~~46.0~~ **19.0 Cost Records**

19.1 Cost Records shall include the following costs directly attributable to the transportation of eligible ~~students~~ pupils on local school district school buses:

~~46.1~~ 19.1.1 Total expenditures by funding code.

~~46.2~~ 19.1.2 Wages of the Drivers.

~~46.3~~ 19.1.3 Bus maintenance costs (expenditure for all bus supplies, repairs and routine service).

~~46.4~~ 19.1.4 Cost of accidents, including bus repairs.

~~46.5~~ 19.1.5 Indirect costs (all those costs not included in above categories and all costs associated with those who supervise the school transportation operation).

#### ~~47.0~~ **20.0 Bus Replacement Schedules**

20.1 The time begins for a new bus when it is placed in service. A bus shall have the required mileage prior to the start of the school year. Once a bus is placed in service for the school year, it will not be replaced unless it is unable to continue service due to mechanical failure.

~~47.1~~ 20.2 The following age and mileage requirements apply:

~~47.1.1~~ 20.2.1 12th year ~~must~~ shall be replaced (it may then be used as a spare); or

~~47.1.2~~ 20.2.2 ~~150,000~~ 190,000 miles no matter age of bus; or

~~47.1.3~~ 20.2.3 ~~79~~ years ~~plus~~ and ~~100,000~~ 130,000 miles; or

~~47.1.4~~ 20.2.4 May be replaced after 10 years.

~~47.2~~ 20.3 Contractors shall be reimbursed for their eligible school buses for the annual allowances permitted by the Formula. New (unused) buses placed in service in a year following their manufacture shall begin their 7 years of capital allowances with the rate specified for the year of manufacture and continue in year increments until completed.

~~47.3~~ 20.4 School buses purchased with state allocated transportation funds may be used by the school districts for purposes other than transportation of pupils to and from school. This type of use shall be at the district's expense and shall occur only during a time when the bus is not making its normal school run.

~~47.4~~ 20.5 In accordance with the Attorney General's opinion of June 18, 1974, regarding the use of buses purchased from State allocated transportation funds for purposes other than the regular transportation of pupils to and from school, the provisions of Title 14, Section 1056, School Property, Use, Control and Management, shall apply.

**48.0 21.0 School Bus Inspections**

~~The Delaware Motor Vehicle Division has two periods of time when all school bus owners shall have their buses inspected each year, once~~ School buses shall be inspected by the Division of Motor Vehicles bi-annually. The first inspection period is during January or February, and the second yearly inspection period is during June, July, or August.

**49.0 22.0 Transportation for ~~Students~~ Pupils with Disabilities**

22.1 Transportation or a reimbursement for transportation expenses actually incurred shall be provided by the State for eligible persons with disabilities by the most economically feasible means compatible with the person's disability subject to the limitations in the following regulations:

~~49.1~~ 22.2 When the legal residence of a person receiving tuition assistance for private placement is within sixty (60) miles (one way) of the school or institution to be attended, the person shall be eligible for round trip reimbursement for transportation on a daily basis at the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement. (Round trip mileage is considered to be from the person's legal residence to the school or institution and return twice a day, or for actual mileage traveled, whichever is less.)

~~49.2~~ 22.3 When the legal residence of a person receiving tuition assistance for private placement is in excess of sixty (60) miles (one way) but less than one hundred (100) miles (one way) from the school or institution to be attended, the person shall be eligible for round trip transportation reimbursement at the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement on a weekly basis and on such other occasions as may be required when the school is not in session due to scheduled vacations or holidays of the school or institution. (Round trip mileage is considered to be from the person's legal residence to the school or institution and return twice a week. The weekly basis is to be determined by the calendar of the school or institution to be attended.)

~~49.3~~ 22.4 When the legal residence of a person receiving tuition assistance for private placement is in excess of one hundred (100) miles (one way) of the school or institution to be attended, the person shall be eligible for round trip reimbursement on the basis of one round trip per year from the person's legal residence to the school or institution and return, and at such other times when care and maintenance of the person is unavailable due to the closing of the residential facility provided in conjunction with the school or institution. (Round trip is considered to be from the person's legal residence to the school or institution to be attended and from the school or institution to the legal residence of the person on an annual basis or at such times as indicated above.)

~~49.4~~ 22.5 Reimbursement shall be computed on the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle from the legal residence to the point of embarkation and return to the legal residence and for the actual fares based on the most economical means of transportation from the point of embarkation to the school or institution to be attended; the return trip shall be computed on the same basis.

~~49.5~~ 22.6 Transportation at State expense may be provided from the legal residence to the point of embarkation in lieu of the per mile reimbursement when it is determined by the local district to be more economically feasible.

~~49.6~~ 22.7 The local district of residence shall be responsible for payment of all such transportation reimbursement when it is determined by the local district to be more economically feasible.

~~49.7~~ 22.8 All requests for payment shall be made by parent, guardian or Relative Caregiver to the transportation supervisor responsible for transportation in the district of residence at a time determined by the district but prior to June 5 of any year.

~~49.8~~ 22.9 When reimbursements are made they shall be based on required documentation to support such payment.

~~49.9~~ 22.10 The legal residence for the purpose of these regulations is defined as the residence of the parent, guardian or Relative Caregiver of the child with disabilities and with whom the child actually resides.

~~49-10~~ 22.11 School Transportation Aides: With the approval of the Department of Education, a state funded school bus aide may be provided on school buses serving special schools or programs for children with disabilities.

**3 DE Reg. 1548 (5/1/00)**

**9 DE Reg. 404 (9/1/05)**

## ~~20-0~~ 23.0 Transportation for Alternative Programs

Costs for transportation shall be paid by the state from funds appropriated for ~~student~~ pupil transportation if transportation is provided by extending already existing routes. Shuttle services that extend existing routes will be allowed. Additional routes established to transport ~~students~~ pupils to and from the Alternative Programs or other special transportation designs ~~will~~ shall not be paid by the state from the school transportation appropriation and shall be included in the Alternative Program budget and be paid from the state allocation for alternative programs and the ~~districts~~ local school district's 30% share. Planning committees for these programs shall include the transportation supervisors who will be providing services. In addition, those supervisors ~~must~~ shall coordinate planning with and submit their transportation plans to the Education Associate for ~~School~~ Pupil Transportation at the Department of Education.

## ~~21-0~~ 24.0 Drugs and Alcohol Testing

~~21-1~~ 24.1 Content:

~~21-1.1~~ 24.1.1 Pursuant to 14 **Del.C.** §2910, this regulation shall apply to the contracting for a program of drug and alcohol testing services necessary to enable ~~public~~ local school districts, charter schools, and any person or entity that contracts with a local school district or charter school to provide transportation for State public school ~~students~~ pupils, to comply with such drug and alcohol testing requirements applicable to Delaware public school bus drivers as are now, or may hereafter be, imposed by federal law.

~~21-1.2~~ 24.1.2 School bus aides shall be subject to the same federal and state drug and alcohol testing requirements as school bus drivers. They shall use non DOT forms, and the employer shall follow the same procedures set forth herein.

~~21-2~~ 24.2 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“**Alcohol**” means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol.

“**CDL**” ~~means a commercial drivers license issued pursuant to 21 Del.C. Ch. 26.~~

“**Department**” means the Delaware Department of Education.

“**DOT**” means the United States Department of Transportation.

“**Drug**” means the controlled substances for which tests are required under the provisions of 49 U.S.C. §31306, 49 CFR Part 382 and 49 CFR Part 40, and include marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

“**Employer**” means school bus contractors or school districts and charter schools when they directly employ school bus drivers.

“**Negative Result**” means a verified negative drug test result or an alcohol test result lower than the Federal standard as defined by the provisions of 49 U.S.C. §31306, 49 CFR Part 382 and 49 CFR Part 40.

“**Positive Result**” means a verified positive, adulterated, or substituted drug test result, an alcohol test result equal to or greater than the Federal standard or a refusal to take a drug or alcohol test as defined by the provisions of 49 U.S.C. §31306, 49 CFR Part 382 and 49 CFR Part 40.

~~21-3~~ 24.3 Federal Regulations

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Employers shall comply with the drug and alcohol testing regulations issued by the Secretary of Transportation of the United States pursuant to 49 U.S.C. §31306 and located at 49 CFR Part 382 and 49 CFR Part 40.

## 21.4 24.4 Drug and Alcohol testing program requirements:

### 21.4.1 24.4.1 The employer shall:

21.4.1.1 24.4.1.1 Be responsible for compliance with all federal and state regulations;

21.4.1.2 24.4.1.2 Maintain drug and alcohol testing records for their school bus drivers and aides.

21.4.1.2.1 24.4.1.2.1 Documentation of drug and alcohol testing results shall flow directly from the Consortium or Third Party Administrator Medical Review Officer (C/TPA/MRO), as defined by the provisions of 49 CFR Part 382 and 49 CFR Part 40, to the employer. Copies of positive results shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.4.1.2.2 24.4.1.2.2 Documentation of results shall be addressed to the individual, or employer, and the transportation supervisors for the school district, charter school or Department so as to ensure confidentiality.

### 21.4.2 24.4.2 The Department shall:

21.4.2.1 24.4.2.1 Bid the contract for the drug and alcohol testing program;

21.4.2.2 24.4.2.2 Monitor the drug and alcohol testing program;

21.4.3 24.4.3 Any school bus driver or aide who is not in compliance with federal and state drug and alcohol testing requirements shall not perform driver or aide duties until they have satisfied the federal and state requirements.

21.4.3.1 24.4.3.1 Any school bus driver or aide who has a positive drug or alcohol test result shall comply with DOT regulations regarding a Substance Abuse Professional (SAP) evaluation, treatment and return to duty testing before another preemployment test is allowed.

21.4.3.2 24.4.3.2 An employer who hires a school bus driver or aide who has previously failed a drug or alcohol test shall ensure that all follow up drug and alcohol testing recommended by the SAP evaluation is implemented.

## 21.5 24.5 Preemployment Testing

21.5.1 24.5.1 School bus drivers with no CDL and aides with no prior experience ~~must~~ shall have a negative preemployment drug test, and the employer ~~must~~ shall receive a negative result before the prospective employee can operate a school bus or serve as an aide.

21.5.2 24.5.2 Bus drivers with a CDL and school bus aides with past experience shall follow DOT rules and regulations to determine the necessity for preemployment drug testing.

21.5.3 24.5.3 Employers shall provide Federal Drug Testing Custody and Control (CCF) forms to new school bus drivers and non DOT forms to school bus aides who shall take the forms to the appropriate collection facility where the driver or aide shall be administered a drug test. Forms shall note the employer and ~~school~~ district or charter school.

21.5.4 24.5.4 Negative results shall be forwarded from the C/TPA/MRO to the employer.

21.5.5 24.5.5 Positive results shall be forwarded from the C/TPA/MRO to the employer. Copies of positive results shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.5.6 24.5.6 Employers shall notify prospective school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the school district or charter school and the Department.

## 21.6 24.6 Random Testing

21.6.1 24.6.1 Employers shall provide the C/TPA/MRO a quarterly list of eligible drivers and aides to be drug and alcohol tested no later than one week before the testing quarter. The list shall note the primary ~~school~~ district or ~~charter school~~ of the drivers and aides. Copies of the lists shall be provided to the school district or charter school transportation supervisors.

~~21.6.2~~ 24.6.2 The C/TPA/MRO shall send the employer lists of drivers and aides to be tested by the end of the first week of the quarter.

~~21.6.3~~ 24.6.3 Employers shall provide CCF and alcohol testing forms to the drivers and aides who shall take the forms and go immediately to the appropriate collection facility where the driver or aide shall be administered a drug test or a drug and alcohol test. Forms shall note the employer and the ~~school district or charter school~~.

~~21.6.4~~ 24.6.4 Employers shall complete the required random tests before the end of the calendar quarter.

~~21.6.5~~ 24.6.5 Negative results shall be forwarded from the C/TPA/MRO to the employer.

~~21.6.6~~ 24.6.6 ~~Notification of p~~Positive results shall be forwarded from the C/TPA/MRO to the employer. Copies of the positive results forms shall be sent to the transportation supervisor for the ~~school district or charter school~~ and the Department for accounting and audit purposes.

~~21.6.7~~ 24.6.7 Employers shall notify school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the ~~school district or charter school~~ and Department.

~~21.7~~ 24.7 Post Accident and Reasonable Suspicion Testing

~~21.7.1~~ 24.7.1 Employers shall provide CCF and alcohol testing forms to the school bus drivers and aides who shall take the forms and go immediately to the appropriate collection facility where the driver or aide shall be administered a drug and alcohol test. Forms shall note the employer and ~~school district and charter school~~.

~~21.7.2~~ 24.7.2 Negative results shall be forwarded from the C/TPA/MRO to the employer.

~~21.7.3~~ 24.7.3 ~~Notification of p~~Positive results shall be forwarded from the C/TPA/MRO to the employer. Copies of the positive result form shall be sent to the transportation supervisor for the local school district or charter school and the Department for accounting and audit purposes.

~~21.7.4~~ 24.7.4 Employers shall notify school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the ~~school district or charter school~~ and the Department.

**3 DE Reg. 942 (1/1/00)**

**6 DE Reg. 643 (11/1/02)**

~~22.0~~ **25.0 Nonpublic, Nonprofit Schools**

~~25.1~~ 25.1 The nonpublic, nonprofit schools shall be responsible for the administration and supervision of the family transportation allowance provided by the State Department of Education. The program is contingent upon General Assembly funding.

~~22.1~~ 25.2 The nonpublic, nonprofit, nonpublic school shall act as the administrator and fiscal agent. If the nonpublic, nonprofit school chooses to use an agent to receive payment other than the nonpublic, nonprofit school, written authorization from the governing board of the nonpublic, nonprofit school, such as the board of trustees or the school board, specifying such agent shall be forwarded to the Education Associate for ~~School Pupil~~ Transportation in the Department of Education. The use of an agent to accept payment shall not relieve the nonpublic, nonprofit school from its responsibility to administer and supervise the transportation program, to maintain records, or to submit such reports as may be required.

~~22.2~~ 25.3 Those nonpublic, nonprofit schools with families requesting transportation allowances shall have a Federal ID number.

~~22.3~~ 25.4 Transportation allowances shall be made only for those eligible ~~students~~ pupils (Delaware residents attending Delaware schools) who meet residence to school proximity guidance of one (1) mile or more for grades K to 6 and two (2) miles or more for grades 7 to 12 and who make application to the nonpublic, nonprofit school for such transportation allowances. These applications for transportation allowances shall be signed by the parent, guardian, or Relative Caregiver and certified by a school administrator. Families of a ~~student~~ pupil who would not otherwise be eligible for the allowance may receive the allowance if a physician certifies that the ~~student~~ pupil is unable to walk or

# PROPOSED REGULATIONS

should not walk from home to school and return. The responsibility for establishing a claim for transportation allowances rests upon the claimant, and all records of this request shall be kept on file in the nonpublic, nonprofit school office. Such records shall be made available for audit by a representative of the Department of Education or the State Auditors.

22-4 25.5 The State shall provide the transportation funds to the nonpublic, nonprofit school or designated agent for eligible families. The family shall direct the nonpublic, nonprofit school or designated agent how the funds are to be dispersed e.g; some or all of the funds to the parent, guardian or Relative Caregiver for tuition, for school provided transportation costs, for an allowance, etc. The nonpublic, nonprofit school shall ensure that its tuition, transportation fees, and other costs of attendance are independent of the allowances.

22-5 25.6 Payment shall be made only on the basis of one trip to and one trip from nonpublic, nonprofit school daily. Families who transport more than one child to the same school by private conveyance shall be reimbursed on the basis of the number of trips rather than on the number of children transported. No family shall qualify for more than one reimbursement for ~~students~~ pupils it transports to a single school except for families with two or more children, one of whom is enrolled in a half day kindergarten program. In the event of car pools, each family is entitled to reimbursement, but a family shall not receive more than the annual allowance.

22-6 25.7 The nonpublic, nonprofit school shall submit ~~the initial~~ a transportation form, provided by the Department of Education, indicating eligible reimbursements, no later than ~~August 31<sup>st</sup>~~ October 1<sup>st</sup> of each year. ~~The nonpublic, nonprofit school or designated agent shall submit the final transportation form provided by the Department of Education no later than October 3rd of each year.~~ All information shall be based on September 30<sup>th</sup> enrollment and eligibility. After the submission of the final transportation form no further adjustments for eligibility shall be made for the remainder of the school year.

22-7 25.8 ~~In September each year, the nonpublic, nonprofit schools shall receive an initial allocation based upon approximately 1/10 of the previous year's allowances. If the school did not participate the previous year, it should notify the DOE School Transportation Office by September 1 to establish an initial disbursement amount. Using the information on all of the DOE transportation forms, the Department shall calculate the statewide allowance for the current year and send remaining funds to the schools in three equal amounts. Upon receipt of the initial form required by the Department of Education the first payment shall be made at the end of September. Upon receipt of the final form the remaining payments will be made at the end of October, January, and April. The school shall return funds not distributed to parents, guardians or Relative Caregivers to the State of Delaware.~~

**8 DE Reg. 541 (10/1/04)**

**9 DE Reg. 404 (9/1/05)**

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES

Statutory Authority: 29 Delaware Code, Section 7903 (29 Del.C. §7903)

### PUBLIC NOTICE

#### 2100 Eligibility Criteria

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 29, 7903(10) and 7909A(e) of the **Delaware Code**, Delaware Health and Social Services (DHSS) / Division of Developmental Disabilities Services proposes to amend their criteria for establishing eligibility related to DDDS services.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Anderson, DDDS, 101 Boyd Boulevard, 26351 Patriot's Way, Georgetown, DE 19947, or by fax to (302) 934-8707 **Division of Developmental Disabilities Services Eligibility Criteria Regulation** by December 31, 2008.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

## SUMMARY OF PROPOSED CHANGES

The Division of Developmental Disabilities Services proposes the following revisions to their criteria for eligibility:

1. Requires financial eligibility for Medicaid Waiver services (new section 1.6);
2. Requires an applicant to meet Intermediate Care Facility/Mental Retardation Level of Care requirements (new section 1.7);
3. Adds new section 1.8 to include proposed sections 1.6 and 1.7 in terms of grandfathering current recipients, adding language that any individual who does not meet the requirements of 1.3 through proposed 1.7 shall be eligible only for the non-Medicaid services offered by DDDS on the effective date of these regulations;
4. Renumbers current regulations to accommodate proposed changes.

### Statutory Authority

- 29 **Del.C.**, subsection 7903 (10);
- 29 **Del.C.**, subsection 7909 A(e)

## 2100 Eligibility Criteria

**1.0** The Division of Developmental Disabilities Services provides services to those individuals with a developmental disability who meet all of the following criteria:

- 1.1 citizen or a lawful alien of the United States;
- 1.2 a resident of the State of Delaware;
- 1.3 a disability/disorder attributed to one or more of the following:
  - 1.3.1 Mental Retardation; defined as a significant generalized limitation in intellectual functioning. Significant generalized limitation in intellectual functioning is defined as IQ scores approximately two standard deviations below the mean. (American Association on Intellectual and Developmental Disabilities; Classification Manual, 2002); and/or
  - 1.3.2 Autistic Disorder (299.00; American Psychiatric Association; Diagnostic & Statistical Manual - IV, 1994); and/or
  - 1.3.3 Asperger's Disorder (299.80; American Psychiatric Association; Diagnostic & Statistical Manual - IV, 1994); and/or
  - 1.3.4 Prader-Willi Syndrome (documented medical diagnosis; World Health Organization; International Classification of Diseases - 9); and/or
  - 1.3.5 Brain injury or neurological condition related to mental retardation that meets: a) a significant generalized impairment in intellectual functioning (defined in 1.3.1); b) significant limitations in adaptive behavior functioning (defined in 1.4); and c) originates before age 22 (defined in 1.5);
- 1.4 significant limitations in adaptive behavior functioning;
  - 1.4.1 Significant limitations in adaptive behavior functioning is defined as performance that is at least two standard deviations below the mean of either:
    - 1.4.1.1 Score on a standardized measure of conceptual, social, or practical skills; or

# PROPOSED REGULATIONS

- 1.4.1.2 Overall score on a standardized measure of conceptual, social and practical skills
- 1.5 the disability originates before age 22;
- 1.6 The applicant is financially eligible (income/assets) for DDDS Medicaid Waiver programs and services and;
- 1.7 Meets Level of Care requirements for Intermediate Care Facility/Mental Retardation (ICF/MR).
- 1.8 Any Individual who is receiving services on the effective date of these regulations who meets the requirements of 1.1 and 1.2 of this section and meets either the requirements of the regulations under which the individual initially established eligibility or the requirements of 1.3 through 1.57 shall be deemed eligible for services, provided however, that any individual who does not meet the requirements of 1.3 through 1.7 shall be eligible only for the non-Medicaid services offered by DDDS on the effective date of these regulations.

**2.0** Intellectual functioning, adaptive behavior functioning, Autistic Disorder, and Asperger's Disorder shall be established and based on the use of standardized assessment instruments accepted by the Division.

**4 DE Reg. 228 (07/01/00)**

**11 DE Reg. 1237 (03/01/08)**

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

### PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Division of Social Services Manual (DSSM); specifically, repealing the rules of the Attendant Services Waiver Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by December 31, 2008.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

### SUMMARY OF PROPOSAL

The proposed amends the Division of Social Services Manual (DSSM) to repeal rules related to the Attendant Services Waiver Program, which was not implemented.

#### Statutory Authority

- 31 **Del.C** §107, *Rules and Regulations*

#### Background

On October 31, 2006, the Division of Medicaid & Medical Services (DMMA) submitted a §1915(c) waiver application to the Centers for Medicaid & Medicaid Services (CMS) for approval. The DMMA announced a thirty-day comment period for this Waiver application in the December 1, 2006 issue.

DMMA withdrew its proposed regulation published on December 1, 2006 at 10 DE Reg. 954 as of February 1, 2007. Please note that eligible clients continue to be placed in the State's Attendant Services Program. This option offers more services to the client population than would be available under the Waiver.

## Summary of Proposal

**DSSM 20700.6 – DSSM 20700.6.7:** This repeal is being undertaken to remove the eligibility regulations for the Attendant Services Waiver (ASW) Program from the Division of Social Services Manual (DSSM). Since the ASW Program was not implemented, the rules at DSSM 20700.6 through DSSM 20700.6.7 are unnecessary. Therefore, to be consistent with the agency's withdrawal of the above-referenced Attendant Services Waiver application sections 20700.6 through 20700.6.7 are being repealed.

### ~~20700.6 ATTENDANT SERVICES WAIVER~~

~~The Attendant Services Waiver (ASW) is a home and community based services program managed by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). The purpose of the waiver is to minimize the likelihood of institutionalization and maximize the potential for independent living for adults with physical disabilities. This program is a consumer directed support program. Participants have an opportunity to hire and train their own attendants and serve as the employer of record for these attendants. DSAAPD staff provides initial intake, assessment, service authorization, and a wavier service plan. The Division of Social Services (DSS) is responsible for determining financial eligibility for the waiver.~~

~~8 DE Reg. 1625 (05/01/05)~~

### ~~20700.6.1 ELIGIBILITY CRITERIA~~

~~To be eligible for this program, an individual must:~~

~~"Be a resident of the State of Delaware~~

~~"Be 18 years of age or older~~

~~"Meet the financial and medical criteria for the DSS Long Term Care Medicaid Program~~

~~"Have a medical condition that meets nursing facility (including skilled and intermediate care) admission standards~~

~~"Meet the ASW criteria as determined by DSAAPD~~

- ~~• Financial eligibility is determined by DSS~~
- ~~• Medical eligibility is determined by the Pre-Admission Screening Unit of DSAAPD~~
- ~~• Program eligibility is determined by DSAAPD.~~

~~An individual must meet ALL of the following criteria:~~

~~"have an anatomical/physical deficit anticipated to last 12 months or more~~

~~"be medically stable-~~

~~"have ability to self direct or have a surrogate who can support the client in making decisions~~

~~Priority is given to applicants who are:~~

~~"persons who with an attendant can complete an educational plan, or can attain or retain gainful employment;~~

~~"persons with greater environmental, social supportive and financial capacity constraints, especially those with constraints in all three areas;~~

~~"persons who are living in costly, congregate living facilities but could be living independently and more cost effectively if they had attendants.~~

~~8 DE Reg. 1625 (05/01/05)~~

### ~~20700.6.2 NUMBER OF RECIPIENTS~~

~~There is a maximum number of recipients who may be served under the ASW each fiscal year. The total unduplicated number of recipients served under the program cannot exceed the maximum number approved by the Centers for Medicare and Medicaid Services (CMS). DSAAPD will monitor the number of individuals receiving ASW so the maximum number is not exceeded.~~

~~8-DE Reg. 1625 (05/01/05)~~

#### **20700.6.3 COST EFFECTIVE REQUIREMENT**

~~In order for an applicant to be eligible for the ASW, the applicant's cost of care cannot exceed the cost if the same applicant were institutionalized. This determination is made on an aggregate basis which considers all ASW recipients. A DSAAPD worker determines cost effectiveness.~~

~~8-DE Reg. 1625 (05/01/05)~~

#### **20700.6.4 APPROVAL**

~~Upon approval, DSS will send a notice of approval to the applicant or his representative. The notice will include the effective date of coverage and the patient pay amount if any. The client's eligibility start date is determined by DSAAPD staff. Only individuals with a Miller Trust may be subject to a patient pay amount. See Section 20720.~~

~~8-DE Reg. 1625 (05/01/05)~~

#### **20700.6.5 POST-ELIGIBILITY BUDGETING**

~~For recipients in the ASW the personal needs allowance is equal to 250% of the Federal SSI Benefit Rate. Collection of the patient pay amount from the recipient or the recipient's representative is the responsibility of the provider who is administering the most costly service.~~

#### **20700.6.6 HOSPITALIZATION OR ILLNESS**

~~Waiver services will terminate upon the 31st consecutive day of hospitalization. There are no Medicaid bed hold days for hospitalization. DSS will periodically redetermine eligibility for continued Medicaid coverage. Waiver services may restart after hospital discharge as determined by DSAAPD staff.~~

~~8-DE Reg. 1625 (05/01/05)~~

#### **20700.6.7 ASW SERVICES**

The Attendant Services Waiver include (s) the following:

- "Attendant Services
- "Adult Day Health
- "Respite
- "Equipment/Supplies
- "Emergency Response Systems
- "Supports Brokerage
- "Personal Care
- "Fiscal Agent
- "Case Management

~~8-DE Reg. 1624 (5/01/05)~~

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## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. § 512)

### PUBLIC NOTICE

#### Court Appointed Special Advocate

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Court Appointed Special Advocate.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by December 31, 2008.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

#### SUMMARY OF PROPOSED CHANGE

The proposed change described below amends policy in the Division of Social Services Manual (DSSM) regarding the Court Appointed Special Advocate.

#### Statutory Authority

- 31 Delaware Code Ch 36, *Court-Appointed Special Advocate Program*

#### Summary of Proposed Changes

**DSSM 1003.4, *Court Appointed Special Advocate (CASA or guardian ad litem)***: This section is being revised to clarify the responsibilities of Division of Social Services (DSS) staff. Text is being deleted that indicates DSS staff will notify the CASA of staffing, investigations, or proceedings regarding the child. DSS staff do not have this information.

#### DSS PROPOSED REGULATION #08-44

#### REVISIONS:

#### 1003.4 Court Appointed Special Advocate (CASA or guardian ad litem)

A Court Appointed Special Advocate (CASA) is given permission to inspect and/or copy any records relating to the child and his or her family/guardian without their consent. The CASA has the authority to interview all parties having significant information relating to the child. ~~The CASA must also be notified of any staffing, investigations or proceedings regarding the child, so that they may participate and represent the child.~~

If information is released under the procedures applying to CASA, pertinent details of the reasons for the release shall be documented and written notification of this release shall be sent to the last known address of the individual to whom the record refers.

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# PROPOSED REGULATIONS

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## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. § 512)

### PUBLIC NOTICE

#### FOOD SUPPLEMENT PROGRAM *Countable Resources and Excluded Resources*

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding *Countable Resources and Excluded Resources*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by December 31, 2008.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

#### SUMMARY OF PROPOSED CHANGES

The proposed changes described below amend Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding *Countable Resources and Excluded Resources*.

#### Statutory Authority

- Food, Conservation, and Energy Act of 2008, Title IV, Section 4104, *Asset Indexation, Education, and Retirement Accounts*;
- 7 CFR §273.8, *Resource eligibility standards*.

#### Summary of Proposed Changes

**DSSM 9046, *Countable Resources* and DSSM 9049, *Excluded Resources*:** The proposed changes amend the Food Supplement Program rules to implement the mandatory provisions of Section 4104 of the Food, Conservation, and Energy Act of 2008 (the Farm Bill) that excludes retirement savings and pension plans and, educational savings plans from countable resources for the Food Supplement Program, effective October 1, 2008.

#### DSS PROPOSED REGULATIONS #08-49

#### REVISIONS:

#### **9046 Definition of Resources**

{273.8(e)}

~~In determining the resources of a non-categorically eligible household, the following will be included:~~

- ~~1. Liquid resources, such as cash on hand, money in checking or savings accounts, savings certificates, stocks or bonds, lump sum payments, funds held in Individual Retirement Accounts (IRA's), and funds held in Keogh plans which do not involve the household member in a contractual relationship with individuals who are not~~

~~household members. In counting resources of household with IRA's or includable Keogh plans, include the total cash value of the account or plan minus the amount of the penalty (if any) that would be exacted for the early withdrawal of the entire amount in the account or plan.~~

~~Business and personal loans, other than deferred repayment educational loans, are counted as resources in the month received. The loan is counted as a resource even if the household anticipates spending all or some of it in the same month. For an ongoing household, excess resources anytime during the month makes a nonassistance (public assistance) household ineligible. Any amount remaining after the month of receipt continues to be counted as a resource until the money is spent.~~

~~When a client reports the receipt of a loan, staff will determine eligibility. If the loan exceeds the resource limit the household is ineligible and a notice of adverse action must be sent. Overpayments will only be processed for those cases where the loan was not spent in the months after receipt after the 10 day notice has expired.~~

~~For example, a client received a \$5,000 loan on March 15th and immediately reported the change. The food stamp case was closed for April due to the resource. The client spent the loan in March. No overpayment would be processed for March.~~

~~A client received and reported a \$4,000 loan on April 25th. The notice of adverse action is sent and the case is closed for June. No overpayment is processed for April or May.~~

~~A client received a \$6,000 loan on May 26th. The client did not report the loan until September 1st. The client still had \$4,000 remaining from the loan. The case is closed for October. No overpayment exists for May and June. An overpayment would be processed for July, August and September.~~

~~2. Non liquid resources, personal property, licensed and unlicensed vehicles, buildings, land, recreational properties and any other property, not specifically excluded under DSSM 9049.~~

~~The value of non-exempt resources, except for licensed vehicles as specified in DSSM 9051 will be its equity value. The equity value is the fair market value less encumbrances.~~

~~3. For a household containing a sponsored alien, deem the resources of the sponsor and the sponsor's spouse according to DSSM 9081.2.~~

## **9046 Countable Resources**

[7 CFR 273.8(c)]

Count the following resources when determining eligibility for food benefit purposes for non-categorical eligible households:

### A. Liquid Resources

1. Cash on hand
2. Money in checking or savings accounts
3. Savings certificates
4. Stocks
5. Bonds
6. Lump sum payments
7. Non-deferred business or personal loans in month of receipt
8. The portion of the equity value of a funeral agreement that exceeds \$1,500

B. Non-Liquid Resources, not specifically excluded under 9049.

1. Personal property
2. Licensed and unlicensed vehicles
3. Buildings, land, recreational properties and any other property

The value of non-exempt resources is the equity value, except for licensed vehicles per DSSM 9051. The equity value is the fair market value minus encumbrances.

C. Deemed Resources of the sponsor (and sponsor's spouse) for sponsored aliens per DSSM 9081.2.

*(Break In Continuity of Sections)*

**9049 Resources Excluded for Food Stamp Purposes**

[273.8(e)]

In determining the resources of a household, only the following will be excluded:

1. ~~The home and surrounding property which is not separated from the home by intervening property owned by others. A public right of way, such as roads which run through surrounding property and separate it from the home, will not affect the exemption of the home. The home and surrounding property will remain exempt when temporarily unoccupied for reasons of employment, training for future employment, illness, vacation, or inhabitation caused by casualty or natural disaster, if the household intends to return. Households that currently do not own a home, but own or are purchasing a lot on which they intend to build or are building a permanent home, will have the value of the lot and, if it is partially completed, the value of the home excluded.~~

2. ~~Household goods, personal effects, the cash value of life insurance policies, one burial plot per household member, and the value of one bona fide funeral agreement per household member, provided that the agreement does not exceed \$1,500 in equity value. If the equity value of the funeral agreement exceeds \$1,500, the value above \$1,500 is counted as a resource. The cash value of pension plans or funds will be excluded, except that Keogh plans which involve no contractual relationship with individuals who are not household members and individual retirement accounts (IRA's) will not be excluded.~~

3. ~~Licensed vehicles per DSSM 9051.~~

4. ~~Property which annually produces income consistent with its fair market value, even if used only on a seasonal basis. Such property includes rental homes and vacation homes.~~

5. ~~Property or work related equipment essential to the employment of a household member. Property such as farm land or work related equipment such as the tools of a tradesman or the machinery of a farmer, which is essential to the employment or self employment of a household member. Property essential to the self employment of a household member engaged in farming continues to be excluded for one year from the date the household member terminates their self employment from farming.~~

6. ~~Installment contracts for the sale of land or other property are exempt if the contract or agreement is producing income consistent with its fair market value and the value of any property sold under contract or held as security in exchange for a purchase price consistent with the fair market value of that property.~~

7. ~~Governmental payments which are designated for the restoration of a home damaged in a disaster. For example, governmental payments made under the Individual and Family Grant program or the Small Business Administration. The household must be subject to a legal sanction if the funds are not used as intended.~~

8. ~~Resources such as but not limited to, irrevocable trust funds, security deposits on rental property or utilities, property in probate and property which the household is making a good faith effort to sell at a reasonable price and which has not been sold. In such cases, establish that the property is for sale and that the household will accept a reasonable offer. Verification may be obtained through a collateral contact or documentation, such as an advertisement for public sale in a newspaper of general circulation, or a listing with a real estate broker. Any funds in trust or transferred to a trust, and the income produced by the trust to the extent it is not available to the household, will be considered inaccessible to the household if:~~

- a) ~~The trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;~~
- b) ~~The trustee administering the fund is either:~~
- 1) ~~A court, or an institution, corporation, or organization which is not under the direction or ownership of any household member, or~~
  - 2) ~~An individual appointed by the court who has court imposed limitations placed on his/her use of the funds which meet the requirements of this paragraph.~~
- e) ~~Trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction or influence of a household member; and~~
- d) ~~The funds held in irrevocable trust are either:—~~
- 1) ~~Established from the households' own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust, or~~
  - 2) ~~Established from non household funds by a non household member.~~
9. ~~Resources, such as those of students or self-employed persons which have been prorated as income under DSSM 9063.3 and DSSM 9074.~~
10. ~~Indian lands held jointly with the Tribe or land that can be sold only with the approval of the Bureau of Indian Affairs; and~~
11. ~~Resources which are excluded for food stamp purposes by express provision of Federal law, such as:~~
- a) ~~Benefits received from the Special Supplemental Food Program for Women, Infants, and Children, (WIC) (P.L. 92-443).~~
  - b) ~~Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (P.L. 91-646).~~
  - c) ~~Earned income tax credits received before January 1, 1980, as a result of P.L. 95-600, Tax Revenue Act of 1978.~~
  - d) ~~Payments received from the Youth Incentive Entitlement Pilot Projects, the Youth Community Conservation and Improvement Programs under Title IV of the Comprehensive Employment and Training Act Amendment of 1978 (P.L. 95-524).—~~
12. ~~Earned Income tax credits are excluded as follows:~~
- ~~A Federal Earned Income tax credit received either as a lump sum or as payments under Section 3507 of the Internal Revenue Code for the month of receipt and the following month for the individual and that individual's spouse.~~
- ~~Any Federal, State or local earned income tax credit received by any household member shall be excluded for 12 months, provided that the household was participating in the Food Stamp Program at the time of receipt of the earned income tax credit and provided the household participates continuously during that 12-month period. Breaks in participation of one month or less due to administrative reasons, such as delayed recertification, shall not be considered as nonparticipating in determining the 12-month exclusion.~~
13. ~~Where an exclusion applies because of the use of a resource by or for a household member, the exclusion will also apply when the resource is being used by or for an ineligible alien or disqualified person whose resources are being counted as part of the household's resources. For example, work related equipment essential to the employment of an ineligible alien or disqualified person will be excluded [in accordance with DSSM 9049(5)], as will one burial plot per ineligible alien or disqualified household member [in accordance with DSSM 9049(2)].—~~
14. ~~Energy assistance payments or allowances excluded as income under DSSM 9059 K.~~
15. ~~Non liquid asset(s) against which a lien has been placed as a result of taking out a business loan and the household is prohibited by the security or lien agreement with the lien holder (creditor) from selling the asset(s).~~
16. ~~Property, real or personal, to the extent that it is directly related to the maintenance or use of a vehicle excluded under DSSM 9051 #1, 2, and 6. Only that portion of real property determined necessary for maintenance or use is excludable under this provision.~~

# PROPOSED REGULATIONS

~~For example, a household which owns a produce truck to earn its livelihood may be prohibited from parking the truck in a residential area. The household may own a 100-acre field and use a quarter-acre of the field to park and/or service the truck. Only the value of the quarter-acre would be excluded under this provision, not the entire 100-acre field.~~

~~17. All of the resources of TANF/GA/RCA and SSI recipients.~~

~~A household member is considered a recipient of these benefits even if the benefits have been authorized but not received, if the benefits are suspended or recouped, or if the benefits are not paid because they are less than a minimum amount.~~

~~Individuals entitled to Medicaid benefits only are not considered recipients of TANF/GA/RCA or SSI.~~

~~18. Allowances paid to children of Vietnam veterans who are born with spina bifida are excluded from income and resources for food stamp purposes. (P.L. 104-204). These monthly allowances (\$200, \$700, or \$1,200) are based on the degree of disability suffered by the child.~~

## **9049 Excluded Resources**

[7 CFR 273.8(e)]

Exclude the following resources when determining eligibility for food benefit purposes for non-categorical eligible households:

### A. Property

1. Home the household resides in.
2. Property surrounding the home not separated by intervening property owned by others, except for public rights of way such as roads.
3. The home and surrounding property temporarily unoccupied for reasons of employment, training for future employment, illness, vacation, or uninhabitability caused by casualty or natural disaster, if the household intends to return.
4. The value of a lot on which a household intends to build (or is building) a permanent home as long as the household currently does not own a home.
5. Property that annually produces income consistent with its fair market value, even if used only on a seasonal basis, such as rental and vacation homes.
6. Property or work-related equipment essential to the employment or self-employment of a household member such as farmland, tools, or machinery.
7. Property essential to the self-employment of a household member engaged in farming is excluded for one year from the date the household member terminates his/her self-employment from farming.
8. Installment contracts for the sale of land or other buildings are exempt if the contract or agreement is producing income consistent with its fair market value. The value of the property sold under such contract or held as security in exchange for a purchase price consistent with the fair market value of that property is also excluded.
9. Security deposits on rental property or utilities.
10. Property in probate and property which the household is making a good faith effort to sell at a reasonable price.
11. Property (or portions of) that it is directly related to the maintenance or use of a vehicle excluded under DSSM 9051 (1, 2, and 6). For example, property used to park a produce truck on for sales, overnight parking and/or maintenance.

B. Household goods and personal effects.

C. Cash value of life insurance policies.

D. One burial plot per household member.

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- E. Value of one bona fide funeral agreement (not exceeding \$1,500) per household member.
- F. Licensed vehicles per DSSM 9051.
- G. Governmental payments for the restoration of a home damaged in a disaster. Examples are payments from the Individual and Family Grant program or the Small Business Administration. The household must be subject to a legal sanction if the household does not use the funds as intended.
- H. Irrevocable trust funds
1. Any funds in trust or funds transferred to a trust, and the income produced by that trust that is not available to the household is inaccessible to the household if:
    - (i) The trust arrangement is not likely to end during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;
    - (ii) The trustee administering the fund is either:
      - (a) A court, or an institution, corporation, or organization which is not under the direction or ownership of any household member, or
      - (b) An individual appointed by the court who has court imposed limitations placed on his/her use of the funds which meet the requirements of this paragraph.
    - (iii) Trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction or influence of a household member; and
    - (iv) The funds held in irrevocable trust are either:
      - (a) Established from the households' own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust, or
      - (b) Established from non-household funds by a non-household member.
- I. Resources prorated as income, such as those of students or self-employed persons. See DSSM 9063.3 or DSSM 9074.
- J. Indian lands held jointly with the Tribe or land that can be sold only with the approval of the Bureau of Indian Affairs.
- K. Resources excluded by provisions of Federal law, such as:
1. Benefits received from the Special Supplemental Food Program for Women, Infants, and Children, (WIC).
  2. Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970.
  3. Payments received from the Youth Incentive Entitlement Pilot Projects, the Youth Community Conservation and Improvement Programs under Title IV of the Comprehensive Employment and Training Act Amendment of 1978.
  4. Monthly allowances of \$200, \$700, or \$1,200 paid to children of Vietnam veterans who are born with spina bifida based on the degree of disability suffered by the child.
  5. Earned income tax credits as follows:
    - (i) A Federal earned income tax credit received either as a lump sum or as payments under Section 3507 of the Internal Revenue Code are excluded for the month of receipt and the following month for the individual and that individual's spouse.
    - (ii) Exclude any Federal, State or local earned income tax credit received by any household member for 12 months if the household was participating in the Food Supplement Program at the time of receipt of the earned income tax credit and provided the household participates continuously during that 12-month period.
    - (iii) Do not consider breaks in participation of one month or less due to administrative reasons as nonparticipation in determining the 12-month exclusion.
- L. Excluded resources used by or for an ineligible alien or disqualified person when counted as part of a household's resources. For example, work-related equipment needed for the employment of an ineligible alien or disqualified person.

# PROPOSED REGULATIONS

- M. Energy assistance payments or allowances excluded as income under DSSM 9059.
- N. Non-liquid assets that have a lien on them due to a business loan that the household cannot sell.
- O. All of the resources of TANF/GA/RCA and SSI recipients\* and households deemed categorically eligible due to DSSM 9042. This exclusion includes:
1. Education and Business Accounts (EBIA) (including interest) up to the \$5000 maximum limit per DSSM 4002.5.
  2. Saving for Education, Entrepreneurship and Down Payment (SEED) accounts (considered EBIA accounts) up to the \$5000.00 limit per DSSM 4002.5.
- \* A household member is a 'recipient' of these benefits even if the benefits have been authorized but not received, if the benefits are suspended or recouped, or if the benefits are not paid because they are less than a minimum amount.
- P. All retirement accounts with federal tax-preferred status in chart below.
- Retirement Accounts with Federal Tax-Preferred Status Excluded for FSP

<u>Section 401 IRS Code</u>	<u>Traditional Defined-Benefit Plan</u>
<u>Section 401(a) IRS Code</u>	<u>Cash Balance Plan</u>
<u>Section 401(a) IRS Code</u>	<u>Employee Stock Ownership Plan</u>
<u>Section 401(a) IRS Code</u>	<u>Keogh Plan</u>
<u>Section 401(a) IRS Code</u>	<u>Money Purchase Pension Plan</u>
<u>Section 401(a) IRS Code</u>	<u>Profit-Sharing Plan</u>
<u>Section 401(a) IRS Code</u>	<u>Simple 401(k)</u>
<u>Section 401(a) IRS Code</u>	<u>401(k)</u>
<u>Section 403(a) IRS Code</u>	<u>403(a)</u>
<u>Section 403(b) IRS Code</u>	<u>403(b)</u>
<u>Section 408 IRS Code</u>	<u>IRA</u>
<u>Section 408(p) IRS Code</u>	<u>Simple Retirement Account IRA</u>
<u>Section 408(k) IRS Code</u>	<u>Simplified Employee Pension Plan (SEP)</u>
<u>Section 408A IRS Code</u>	<u>Roth IRA</u>
<u>Section 457(b) IRS Code</u>	<u>Eligible 457(b) Plan</u>
<u>Section 501(c) (18)</u>	<u>501(c)18 Plan</u>
<u>Section 8439 of Title 5 USC</u>	<u>Federal Thrift Savings Plan</u>

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Q. Tax-preferred education savings accounts.

Section 529	Qualified Tuition Programs
Coverdell	IRA

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## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

### PUBLIC NOTICE

#### FOOD SUPPLEMENT PROGRAM Electronic Benefit Transfer

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding *Electronic Benefit Transfer*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by December 31, 2008.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

#### SUMMARY OF PROPOSED CHANGES

The proposed changes described below amend Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding *Electronic Benefit Transfer*.

#### Statutory Authority

- Food, Conservation, and Energy Act of 2008, Title IV, Part III, Section 4114, *Accrual of Benefits*

#### Summary of Proposed Changes

Effective October 1, 2008, the Food Supplement Program (FSP) is the new name for Delaware's food program.

The proposed changes amend the Food Supplement Program (FSP) rules to implement the federally mandated provisions of Section 4114 of the Food, Conservation, and Energy Act of 2008 (the Farm Bill), effective October 1, 2008. The change requires states to only expunge stale benefits if the benefits have not been accessed for 12 months. Therefore, the only policy manual change being made is to remove all references to 270 days and replace with 365 days.

#### 9093.1 Definitions/Acronyms

**Administrative Terminal:** This is the eFunds system through which DSS staff can obtain EBT card and account information.

**Authorized Representative:** This is an individual outside the household designated to have access to the household's benefit account. This can also be a household member, for example, a spouse, who is a secondary card holder.

**Benefit Status:** This is a code which indicates the current status of the benefit in the Administrative Terminal.

**Card Number:** The card number is printed on the front of the EBT card. The first six digits are the same for all of Delaware's cards. This is known as the Primary Account Number (PAN).

**Card Status:** An EBT card may be active or inactive. The card status for a replacement card can indicate stolen, lost, payee changed, name changed, damaged, undelivered, deactivated/cancelled or bad address.

**Date Available:** Benefits are available at 6:00 a.m. on the date specified in the Administrative Terminal. Regular monthly food stamp benefits are available according to a seven day staggered schedule based on the last name. Benefits start staggering on the fifth calendar day of each month.

**eFunds Customer Support:** The Customer Support Unit receives phone calls from participants to check balances, report lost or stolen cards, report problems with a retailer, and request new PINs. The CSU number is 1-800-526-9099.

**Expunged Benefits:** Benefits in client accounts not used for ~~270~~ 365 days are expunged (removed) from the account forever.

**FNS Number:** A unique number is assigned to retailers by FNS indicating that the retailer is eligible to accept food stamp benefits.

**Hold Amount:** When a food stamp manual voucher transaction is used, an authorization number must be obtained by phoning eFunds. A hold is put on the participant's food stamp benefits balance equal to the amount of the transaction until the voucher is cleared by the retailer. Once an accept reason is assigned to the voucher, the hold amount is deducted from the participant's benefit balance and this field becomes blank.

**Manual Entries:** If a card or POS machine is damaged, the card number can be keyed manually to complete the transaction.

**Manual Voucher:** Retailers use paper vouchers when the eFunds system is not available. Retailers who are not eligible to have POS terminals also use these vouchers. A voucher has a unique number which identifies the voucher. This field is completed only if the transaction displayed in the Administrative Terminal is an off-line voucher.

**PAN:** The Primary Account Number is the 16 digit number on the card. This is also called the card number.

**PIN (Personal Identification Number):** A PIN is a four number secret code that must be used when the EBT card is used. No one can use the card but the participant as long as the participant does not give the PIN out to anyone.

**PIN Info:** The Card Maintenance screen in the Administrative Terminal displays whether or not a PIN has been selected and the method. Yes indicates that a PIN has been selected. Fails is the number of times the PIN entered has failed that day. Chg Count is the number of times the PIN has been changed. Method is how the PIN was selected.

**Point-of-Sale (POS) Terminal:** A POS is a device on which transactions are made by the food stamp participant. The POS machine reads the card and allows the participant to buy food with the food stamp benefits.

**Stale Benefits:** Benefits not used by a household within 60, 90 or 230 days are called stale benefits.

*(Break in Continuity of Sections)*

### **9093.8 EBT Benefits and Claim Issues**

When eFunds posts the EBT benefits to the household's account, the household is considered in receipt of those benefits. If the household receives benefits they were not entitled to, DSS/ARMS will establish a claim. DSS/ARMS establishes a claim even if the household has not used the benefits in the EBT account. As long as the benefits are in the account, the household has access to those benefits and owes the State the amount of the claim.

ARMS must allow a household to pay its claim using benefits from its EBT benefit account according to DSSM 7004.3.

Benefits not used for 230 days are stale and ARMS can use the stale benefits to credit a household's claim with the consent of the household.

eFunds will expunge benefits not used for ~~270~~ 365 days from the household's account and credit the amount to a household's outstanding claim.

## 9093.9 Aging Periods and Expungement Process

Benefits remain available to the household for ~~270~~ 365 days from the date of availability. eFunds sends reports to DSS that show accounts with no activity.

eFunds provides DSS with a report for the following periods of time:

- Period 1: 60 days
- Period 2: 90 days
- Period 3: 230 days
- Period 4: ~~270~~ 365 days

A household will get a notice at Periods 1, 2 and 3 if the household has not used benefits for 60, 90 or 230 days. Stale benefits are benefits not used by these time periods. The notice will tell the household the following information:

- The account has not been used in the past 60, 90 or 230 days;
- To call the eFunds customer service unit to get the balance on the account;
- Stale food stamp benefits not used for 230 days can be applied to any existing claim with the client's permission;
- Food stamp benefits that are not used by day ~~270~~ 365 will be removed from the account forever; and
- Food stamp benefits removed from the account on day ~~270~~ 365 will be applied to any remaining food stamp claim."

On day 230, DSS will generate notices to clients with outstanding claims. The notice tells the household that ARMS will apply benefits not used for 230 days to the outstanding claim unless the household contacts ARMS within ten days.

On day 250, households who do not contact ARMS to stop the repayment will have their stale benefits applied to the outstanding claim. On day ~~270~~ 365, the eFunds system will expunge (remove from the account) any remaining stale benefits and send DSS a report of those benefits expunged.

DCIS II and ARMS accounting systems will credit any expunged benefits to household accounts with an outstanding claim. ARMS and the Payments Unit will receive a report of benefits posted to household's claims so ARMS can update the benefit recovery screens. ARMS will send the client a credit slip indicating the credit made on their claim and the existing balance.

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## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION 2930 Council on Real Estate Appraisers

Statutory Authority: 24 Delaware Code, Section 4006(a)(1) (24 **Del.C.** §4006(a)(1))  
24 **DE Admin. Code** 2930

### PUBLIC NOTICE

#### 2930 Council on Real Estate Appraisers

Pursuant to 24 **Del.C.** §4006(a)(1), the Council on Real Estate Appraisers has proposed revisions to its rules and regulations.

A public hearing will be held on January 20, 2009 at 9:45 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Council on Real Estate Appraisers, 861 Silver Lake Boulevard, Dover, Delaware 11904. Persons wishing to submit written comments may forward these to the Council at the above address. The final date to receive written comments will be at the public hearing.

The Council proposes amendments to Rule 2.5, which addresses the Council's continuing education audit. The Council will audit a minimum of 25% of the licensees during each renewal period. In addition, Rule 2.5.4 is added to expressly give the Board authority to conduct hearings and impose the full range of sanctions available under 24 **Del.C.** §4016 when licensees fail to comply with continuing education requirements.

Several Rules concerning the specific continuing education requirements are also revised. Rule 2.5.4.2 is amended to state that, beginning on November 1, 2009, during each renewal period, all licensees must complete **three** hours of education on Delaware Law, Rules and Regulations. Currently, only two hours of education in this subject matter are required. Rule 2.5.10 is amended to clarify that the requirement that 14 hours of education per licensure period must be taken in a traditional classroom setting begins November 1, 2009. The provision that the seven hour USPAP update course must be taken in a classroom is stricken. Rule 2.5.11 is revised to state that all courses must be approved by the Council to qualify as continuing education.

Pursuant to the new Rule 2.5.13, a hardship provision is added, which will give the Council discretion to grant an extension for completion of continuing education in certain specified circumstances.

Finally, Rule 4.2.4 is amended for greater clarity. This Rule provides that, for a certain period of time, a licensee who has been sanctioned by the Council is prohibited from supervising trainees. The revisions clarify the parameters of this prohibition and add an exemption for licensees who were sanctioned prior to July 1, 2009.

The proposed amendments strengthen continuing education standards. Further, pursuant to the revisions, the Council will be given the authority to impose a full range of sanctions on licensees who do not comply with continuing education requirements. The Rule prohibiting licensees with disciplinary histories from supervising trainees is clarified. Therefore, the proposed revisions will serve to protect the public from unsafe practices and enhance practitioner competence.

The Council will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

## 2930 Council on Real Estate Appraisers

### 1.0 Application for Appraiser License or Certificate

- 1.1 Application. A person who wishes to file an application for a real property appraiser license or certificate may obtain the required form upon request to the Council. In general, the form calls for information such as the applicant's name and address, the applicant's social security number, places of residence and employment, experience, education, and other information as may be necessary to identify the applicant and review the applicant's qualifications for licensure or certification.
- 1.2 Filing and Fees
  - 1.2.1 Properly completed applications together with the appropriate fee(s) must be received in the Council's office prior to scheduling the examination.
  - 1.2.2 A processing fee set by the Division of Professional Regulation will be charged for the following:
    - 1.2.2.1 Initial application and licensure for appraiser trainee license
    - 1.2.2.2 Initial application and licensure for licensed real property appraiser license
    - 1.2.2.3 Initial application and certification for certified residential real property appraiser certificate
    - 1.2.2.4 Initial application and certification for certified general real property appraiser certificate
    - 1.2.2.5 Renewal
    - 1.2.2.6 Duplicate license and certificate
    - 1.2.2.7 Roster
    - 1.2.2.8 Federal Appraiser Registry

1.2.2.9 Letter of Good Standing

1.2.3 Fees shall be made payable to the "State of Delaware," and mailed to the Delaware Council on Real Estate Appraisers, Cannon Building, Suite 203, 861 Silver Lake Boulevard, Dover, Delaware 19904. For further information, please contact the Administrative Assistant to the Council at (302) 744-4500.

**4 DE Reg. 1504 (03/01/01)**

**9 DE Reg. 1377 (03/01/06)**

## **2.0 Appraiser Licensing and Certification**

### **2.1 Qualifications for Appraiser Licensure and Certification**

2.1.1 The qualifications for licensure or certification shall be the criteria established by the Appraisal Qualifications Board (AQB) of the Appraisal Foundation for:

- 2.1.1.1 certified general real property appraiser;
- 2.1.1.2 certified residential real property appraiser;
- 2.1.1.3 licensed real property appraiser; and
- 2.1.1.4 trainee real property appraiser.

2.1.2 A summary of the criteria set by the AQB is available from the Division of Professional Regulation and designated "Informational Supplement to the Regulations." The Supplement is regularly updated by the Council but the most current information is available directly from The Appraisal Foundation, 1155 15th Street, NW, Suite 1111, Washington, DC 20005.

2.1.3 The 2008 qualification criteria established by the AQB will be phased in using the segmented approach. The three AQB components that must be satisfied to obtaining licensure are: education, experience and examination. An applicant must meet the criteria in effect at the time he or she completes one of these components. Therefore, all applicants for certification or licensure must meet the 2008 qualifications criteria established by the AQB for any component completed on or after January 1, 2008.

### **2.2 License and Certificate Renewal**

2.2.1 In September of each odd numbered year, the Division of Professional Regulation will send renewal notices to the mailing address on file of all licensees and certificate holders. Certificates and licenses will expire on October 31st of each odd numbered year.

2.2.2 As a condition of renewal, all licensees and certificate holders, either resident or reciprocal, shall be required to satisfy the continuing education requirements set forth in rule 2.3 of this Section.

2.2.3 A licensee or certificate holder shall not perform appraisals after a license has expired. A licensee or certificate holder may renew a certificate or license within 12 months of its expiration. After 12 months, the individual must reapply as a new applicant.

2.2.4 A licensee or certificate holder may apply for inactive status for a period not to exceed 6 years if he or she is not performing appraisals in Delaware.

2.2.4.1 Persons with in an inactive license or certificate must complete the same continuing education requirement as active licensees or certificate holders. Evidence of completion is due at renewal as provided in Rule 2.3.

2.2.4.2 An inactive license or certificate can be reactivated by notifying the Council in writing.

### **2.3 Continuing Education**

2.3.1 All licensees and certificate holders are required to attest to the completion of continuing education according to the following schedule:

- 2.3.1.1 No continuing education is required for fewer than 16 months of licensure;
- 2.3.1.2 Effective with the licensure period beginning November 1, 2007, fourteen (14) hours of continuing education are required after at least 6months but fewer than 24 months of licensure; and
- 2.3.1.3 twenty-eight (28) hours of continuing education are required after 24 months of licensure.

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# PROPOSED REGULATIONS

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- 2.4 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 2.0.
- 2.4.1 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.
- 2.4.2 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 2.5.
- 2.5 Random audits will be performed by the Council to ensure compliance with the CEU requirements. At least 25% of the licensees shall be audited at each renewal. The Council shall have the discretion to increase the percentage of licensees to be audited.
- 2.5.1 The Council will notify licensees within sixty (60) days after January 31 that they have been selected for audit.
- 2.5.2 Licensees selected for random audit shall be required to submit verification within ten (10) days of receipt of notification of selection for audit.
- 2.5.3 Verification shall include such information necessary for the Council to assess whether the course or other activity meets the CE requirements in Section 2.0, which may include, but is not limited to, the following information:
- 2.5.3.1 Proof of attendance. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance;
- 2.5.3.2 Date of CE course;
- 2.5.3.3 Instructor of CE course;
- 2.5.3.4 Sponsor of CE course;
- 2.5.3.5 Title of CE course; and
- 2.5.3.6 Number of hours of CE course.
- 2.5.4 The Council shall review all documentation submitted by licensees pursuant to the continuing education audit. If the Council determines that the licensee has met the continuing education requirements, his or her license shall remain in effect. If the Council determines that the licensee has not met the continuing education requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. The hearing will be conducted to determine if there are any extenuating circumstances justifying the noncompliance with the continuing education requirements. Unjustified noncompliance with the continuing education requirements set forth in these rules and regulations shall constitute a violation of 24 Del.C. §4014(a)(5) and the licensee may be subject to one or more of the disciplinary sanctions set forth in 24 Del.C. §4016.
- 2.5.45 All licensees and certificate holders, except as provided in 2.3.1.1, must complete as a condition of each renewal:
- 2.5.45.1 The seven (7) hour National USPAP Update Course or its equivalent as determined through the AQB Course Approval Program or by an alternate method established by the AQB and
- 2.5.45.2 ~~two (2)~~ Beginning November 1, 2009, and thereafter three (3) hours of education on Delaware Law, Rules and Regulations
- 2.5.56 Programs must be structured to maintain or increase an appraiser's skill, knowledge, and competency in real estate appraising. The following topics are appropriate but not exclusive:
- Influences on real estate value
  - Legal consideration of appraisal
  - Types of value
  - Real estate markets and analysis
  - Valuation process
  - Property description
  - Highest and best use
  - Appraisal math & statistics
  - Sales comparison approach

- Site value
  - Cost approach
  - Income approach
    - Estimation of income and expenses
    - Operating statement ratios
    - Direct capitalization
    - Cash flow estimates
    - Measures of cash flow
    - Discounted cash flow analysis
    - Gross rent multiplier analysis
  - Valuation of partial interests
  - Appraisal standards and ethics
  - Narrative report writing
  - Appraisal Statistical concepts
  - Ad valorem taxation
  - Arbitration
  - Business courses related to real estate appraisal
  - Development cost estimating
  - Ethics and standards of professional practice
  - Land use planning, zoning and taxation
  - Management, leasing, brokerage, timesharing
  - Property development
  - Real estate appraisal (valuations/evaluations)
  - Real estate financing and investment
  - Real estate law
  - Real estate litigation
  - Real estate appraisal related computer applications
  - Real estate securities and syndication
  - Real property exchange
  - Delaware law and regulations
- 2.5.67 Continuing education credit, up to 14 hours per licensure cycle, may also be granted for participation, other than as a student, in:
- 2.5.67.1 Teaching, including preparation time up to the number of hours spent teaching, for example, a 3 hour class can be submitted for 6 hours if the preparation time was at least 3 hours.
  - 2.5.67.2 Program development
  - 2.5.67.3 Authorship of textbooks
- 2.5.78 Continuing education credit may be awarded for participation in field trips, conferences, and trade association meetings, excluding travel time, if those activities specifically relate to real estate appraisal education, but for no more than eight (8) hours per licensure period.
- 2.5.89 A creditable hour is defined as fifty minutes out of each sixty minute segment. The educational offering must be at least two hours.
- 2.5.910 The Delaware Council on Real Estate Appraisers may approve the content of a distance education course after approval of the delivery mechanism is approved from one of the following sources:
- 2.5.910.1 AQB approved organizations providing approval of course design and delivery, such as the International Distance Education Certification Center (IDECC);
  - 2.5.910.2 A college that qualifies for content approval and awards academic credit for the distance education course; or
  - 2.5.910.3 A qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporates interactivity;

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~~2.5.4011~~ Beginning November 1, 2009, and thereafter, at least 14 hours per licensure period must be taken in a traditional classroom setting, with an instructor. ~~The mandatory 7 hour USPAP update course must be taken in a traditional classroom setting, with an instructor.~~

~~2.5.4412~~ Educational offerings that have documented approval by the AQB or another state are automatically approved when they are submitted to the Council with a certificate of attendance. In cases where the educational offering has not been approved by the AQB or another state Courses must be approved by the Council to qualify as continuing education. Either the provider or the appraiser must apply to the Council for approval using a form approved by the Council. Applicants seeking pre-approval must submit all required documentation 60 days before the scheduled offering.

2.5.13 Hardship. An applicant for license renewal may be granted an extension of time in which to complete continuing education hours upon a showing of hardship. Hardship may include, but is not limited to, disability, illness, extended absence from the country and exceptional family responsibilities. The Council may grant an extension, not to exceed two years, of time within which continuing education requirements must be completed. In cases of physical disability or illness, the Council reserves the right to require a letter from a physician attesting to the licensee's physical condition. No extension of time shall be granted unless the licensee submits a written request to the Council prior to the expiration of the license.

## 2.6 Duplicate License or Certificate Fee

2.6.1 By submitting a written request to the Council and paying the appropriate fee as set by the Division of Professional Regulation, a licensee or certificate holder may obtain a duplicate real property appraiser license, certificate or pocket card to replace an original license, certificate or pocket card which has been lost, damaged, destroyed, or if the name of the licensee or certificate holder has been lawfully changed. A certified copy of a marriage license, divorce decree or court order of a name change must accompany a request for a change of name.

2.7 Federal Appraiser Registry. Licensees and certificate holders are required to be enrolled in the federal roster or registry of state licensed and state certified real property appraisers. The fee established for that purpose shall be paid biennially by the license or certificate holder to the State of Delaware.

**4 DE Reg. 1504 (03/01/01)**

**6 DE Reg. 1668 (06/01/03)**

**9 DE Reg. 1377 (03/01/06)**

**11 DE Reg. 813 (12/01/07)**

**11 DE Reg. 1499 (05/01/08)**

## 3.0 Examination

### 3.1 Examination

3.1.1 The Council shall review each application to determine whether the applicant is qualified under 24 **Del.C.** §4008 to sit for the examination.

3.1.2 Applicants for licensure as a state licensed real property appraiser and for certification as a state certified residential or general real property appraiser shall successfully complete the examination as endorsed by the AQB and approved by the Council on Real Estate Appraisers.

3.1.3 The passing scores on the examinations shall be the scores recommended as passing by Assessment Systems, Inc., the successor agency or company then contracted by the Division of Professional Regulation for administering the examination as endorsed by the Council on Real Estate Appraisers.

**4 DE Reg. 1504 (03/01/01)**

**9 DE Reg. 1377 (03/01/06)**

## 4.0 General Appraisal Practice

### 4.1 Administrative Responsibilities

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- 4.1.1 A State licensed real property appraiser shall utilize the term "State licensed real property appraiser"; a State certified residential real property appraiser shall utilize the term "State certified residential real property appraiser"; and a State certified general real property appraiser shall utilize the term "State certified general real property appraiser" when performing and signing appraisals. The terms "certified" or "licensed" shall not be used in connection with appraisals or appraisers in any other form. A State licensed appraiser trainee shall use the term "State licensed appraiser trainee" or "appraiser trainee" and shall only co-sign appraisals along with a State licensed or State certified real property appraiser. Approved abbreviations are as follows:
- DE Cert Gen followed by the certification number,
  - DE Cert Res followed by the certification number,
  - DE Lic Appr followed by the license number,
  - DE Appr Trainee followed by the license number.
- 4.1.2 The real property appraiser license or certificate of a State licensed or State certified real property appraiser shall be prominently displayed at the appraiser's place of business. The license of a State licensed appraiser trainee shall be prominently displayed at his or her supervisor's place of business.
- 4.1.3 The biennial license or certificate renewal pocket card issued by the Council to each State licensed or State certified real property appraiser shall be retained by the licensee or certificate holder as evidence of licensure or certification. When performing appraisals, the licensee or certificate holder shall carry on his/her person the pocket card issued by the Council.
- 4.1.4 When advertising or otherwise holding himself/herself out as a real property appraiser, a State licensed real property appraiser shall identify himself/herself as a "State licensed real property appraiser." A State certified residential real property appraiser shall identify himself/herself as a "State certified residential real property appraiser". A State certified general real property appraiser shall identify himself/herself as a "State certified general real property appraiser." A State licensed real estate appraisal trainee shall identify himself/herself as a "State licensed real estate appraiser trainee."
- 4.1.5 Licensure or certification as a real property appraiser is granted only to persons and does not extend to a business entity.
- 4.1.6 All licensees and certificate holders shall notify the Council in writing of each change of business address, residence address, e-mail address, business telephone number or trade name within ten (10) days of said change. The information provided shall be sufficiently descriptive to enable the Council to correspond with and locate the licensee or certificate holder. All licensees and certificate holders shall notify the Council in writing of each change of supervisor or employer, and shall provide the Council with the new supervisor's or employer's name, business address, and business telephone number.
- 4.1.7 Each written appraisal report prepared by or under the direction of a State licensed or State certified real property appraiser shall bear the signature of the State licensed or State certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the appropriate title such as "appraiser trainee" (as co-signer only), "State licensed real property appraiser," "State certified residential real property appraiser," or the designation "State certified general real property appraiser," or the approved abbreviations as specified in Rule 4.1.1. Said certified or licensed appraiser shall be fully responsible for the content of the report prepared under his or her direction. Where applicable, each appraisal report shall also indicate whether or not the State licensed or State certified appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance.
- 4.1.8 Each State certified or State licensed appraiser shall be responsible for the proper maintenance and retention of the appraisal records.
- 4.2 Responsibilities of Supervisors of State Licensed Trainees
- 4.2.1 A state licensed appraiser trainee may assist in the completion of an appraisal report, including an opinion of value, and may co-sign an appraisal, provided that he/she is actively and personally

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## PROPOSED REGULATIONS

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- supervised by a state certified real property appraiser, provided that the appraisal report is reviewed and signed by the state certified real property appraiser, and provided that the certified appraiser accepts total responsibility for the appraisal report. An appraiser trainee is permitted to have more than one supervising appraiser. Notwithstanding any language in Rule 4.2 to the contrary, as of January 1, 2008 and in accord with the AQB qualification criteria in effect as of that date, only certified appraisers in good standing may supervise trainees.
- 4.2.2 A state certified real property appraiser may employ a person(s) as a state licensed appraiser trainee(s) to assist in the performance of real estate appraisals, provided that the state certified real property appraiser:
- 4.2.2.1 Provides direct supervision of the state licensed appraiser trainee as defined in the Uniform Standards of Professional Appraisal Practice (USPAP); "Direct Supervision" means to:
    - 4.2.2.1.1 personally inspect with the trainee the interior and exterior of each property appraised;
    - 4.2.2.1.2 personally review each appraisal report prepared by the trainee;
    - 4.2.2.1.3 accept full responsibility for the report;
    - 4.2.2.1.4 assign work to the trainee only if the trainee is competent to perform such work; and
    - 4.2.2.1.5 approve and sign the report as being independently and impartially prepared and in compliance with USPAP, these rules and regulations, and applicable statutory requirements;
  - 4.2.2.2 Reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a state licensed appraiser trainee is utilized;
  - 4.2.2.3 Complies with all provisions of 4.1.7 regarding appraisal reports;
  - 4.2.2.4 Reviews and approves a trainee's experience log maintained pursuant to 4.3.2.2. The supervisor shall make available to the trainee a copy of any appraisal report that the trainee assisted in preparing that is requested for review by the Council;
  - 4.2.2.5 Supervises no more than three (3) trainees whose application for exemption has not been approved by the Council pursuant to Rule 4.2.3. Beginning January 1, 2008, a supervising appraiser shall not supervise more than three trainees at one time regardless of their status concerning exemption;
  - 4.2.2.6 Signs an affidavit affirming that he/she is a State certified Real Property Appraiser and that he/she shall comply with all rules and policies regarding supervisory appraisers; and
  - 4.2.2.7 Immediately advises the Council in writing when the certified appraiser is no longer supervising the trainee. The writing shall include the last known address of the appraiser trainee along with a copy of the letter from the supervisor to the trainee advising the trainee that his/her employment has been terminated or the letter of resignation from the trainee to the supervisor, whichever is applicable.
- 4.2.3 After the trainee has obtained two hundred fifty (250) hours of residential appraising or one thousand (1,000) hours of non-residential appraising experience as defined by the Appraisal Qualifications Board in its appraisal qualifications criteria, the supervisor and the trainee may jointly apply to the Council on a form provided by the Council, for an exemption that would allow the supervisor to sign the report without inspecting the property as provided by Rule 4.2.2.1.1, provided the trainee is competent to perform the inspection.
- 4.2.4 ~~Beginning July 1, 2008, any person who has been subject to disciplinary action within the preceding three years shall not be eligible to supervise trainees for three years after the completion of any sanction.~~ Effective July 1, 2009, any certified or licensed appraiser who has been sanctioned by the Council within the preceding three years shall not be eligible to supervise trainees for three years after the date of completion of the sanction. Where the sanction is a letter of reprimand, the date of completion is the date that the letter is signed and mailed. Where the sanction is a fine, the date of completion is the date that the fine is paid. Where the sanction is probation or suspension, the date of completion is the date when the license is reinstated in full

with no restrictions or limitations. State certified or licensed appraisers who were sanctioned by the Council prior to July 1, 2009 are exempt from this provision.

4.3 Responsibilities of State Licensed Appraiser Trainees

4.3.1 All appraiser trainees must be licensed as required under 24 **Del.C.** Ch. 40.

4.3.2 A State licensed trainee may assist in the performance of real estate appraisals provided that:

4.3.2.1 The trainee shall only work under the direct supervision of one or more State certified real property appraiser(s); an individual who is no longer supervised shall not engage in the act of appraising until a new license is issued showing a new supervisor;

4.3.2.2 The trainee shall maintain an appraisal experience log on a form provided by the Council and certified by the supervising appraiser;

4.3.2.3 The trainee shall inspect the property and participate in the appraisal process in order to receive experience credit for the hours spent. In order for the trainee to receive experience log credit, either the contribution of the trainee shall be identified in the report, with the trainee identified by name, state and license number, or the trainee shall sign the report. The appraisal shall be signed by the trainee as follows:

The trainee shall place on the "other" line in the signature section of the appraisal forms, his or her license # and the title "appraiser Trainee" in the appropriate places. For example:

"or other (describe) Appraiser Trainee State# X4-xxx"

4.3.2.4 The trainee shall ensure that the log is available at all times for inspection by the Council; and

4.3.2.5 When performing appraisal assignments, the trainee shall carry on his/her person the license issued by the Council.

4 DE Reg. 1504 (03/01/01)

9 DE Reg. 1377 (03/01/06)

11 DE Reg. 813 (12/01/07)

11 DE Reg. 1499 (05/01/08)

**\*Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

[2930 Council on Real Estate Appraisers](#)

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**DIVISION OF PROFESSIONAL REGULATION  
3300 Board of Veterinary Medicine**

Statutory Authority: 24 Delaware Code, Section 3306(a)(1) (24 **Del.C.** §3306(a)(1))  
24 **DE Admin. Code** 3300

**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §3306(a)(1), the Board of Veterinary Medicine has proposed revisions to its rules and regulations.

A public hearing will be held on January 13, 2009 at 1:15 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of

Veterinary Medicine, 861 Silver Lake Boulevard, Dover, Delaware 11904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board proposes amendments to Rules 9.0 and 14.0, which address continuing education requirements for veterinarians and veterinary technicians. Provisions are added which expressly give the Board authority to conduct hearings and impose sanctions regarding licensees' failure to comply with continuing education requirements. In addition, the proposed amendments provide for proration of continuing education requirements based on the period of licensure.

The Board proposes several revisions to Rule 11.0, concerning qualifications for licensure by examination as a veterinary technician. Rule 11.1.2 is amended to clarify that an applicant, who has not graduated from an AVMA-accredited program, may qualify to take the examination, based on educational and/or experiential alternatives, only until October 2013. Further, qualifying practical experience must be related to animal care and handling under the direct supervision of a licensed veterinarian.

Finally, the Board proposes revisions to correct various typographical errors.

The proposed amendments will expressly give the Board authority to sanction licensees who do not comply with continuing education requirements. The amendments also clarify the standards for licensure for veterinary technicians. Therefore, the proposed revisions will serve to protect the public from unsafe practices and enhance practitioner competence.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

### **3300 Board of Veterinary Medicine**

#### **1.0 Supervision (24 Del.C. §3303(10) and (11))**

- 1.1 Supervision refers to the oversight of any person performing non-licensed support activities and/or licensed veterinary technician activities by a licensed Delaware veterinarian. Oversight includes control over the work schedule of the person performing support and/or veterinary technician activities and any remuneration the person receives for performing such activities. Oversight does not include remuneration paid directly to support personnel or veterinary technicians by the public. Supervision of veterinary technicians and support personnel is based on the following:
  - 1.1.1 The initial examination of the animal by the veterinarian is to be performed prior to the delegation of work to be performed by support personnel. The veterinarian may, however, authorize support or veterinary technician personnel to administer emergency measures prior to the initial examination.
  - 1.1.2 The veterinarian shall develop a treatment plan to be referenced by support and/or veterinary technician personnel.
  - 1.1.3 The veterinarian must authorize the work to be performed by support and/or veterinary technician personnel. Whether tasks are appropriate to be delegated may differ from case to case.
- 1.2 At no time may support personnel perform the following activities (24 Del.C. §3303(10)):
  - 1.2.1 Diagnosing.
  - 1.2.2 Prognosing
  - 1.2.3 Prescribing.
  - 1.2.4 Inducing Anesthesia
  - 1.2.5 Performing Surgery.
  - 1.2.6 Administration of Rabies vaccinations.
  - 1.2.7 Operative dentistry and oral surgery.
  - 1.2.8 Centesis of body structures (not to include venipuncture) in other than emergency situations.
  - 1.2.9 The placement of tubes into closed body structures, such as chest tubes, in other than emergency situations (not to include urinary or IV catheters; see Section 1.5.1).

- 1.2.10 Splinting or casting of broken bones in other than emergency situations.
- 1.2.11 Euthanasia.
- 1.2.12 Issue health certificates.
- 1.3 At no time may licensed veterinary technicians perform the following activities (24 **Del.C.** §3303(11):
  - 1.3.1 Diagnosing.
  - 1.3.2 Prognosing.
  - 1.3.3 Prescribing.
  - 1.3.4 Performing Surgery (excluding the tacking/suturing of intravenous and urinary catheters and nasal cannulae to skin).
  - 1.3.5 Administration of Rabies Vaccinations.
  - 1.3.6 Operative dentistry and oral surgery.
  - 1.3.7 Centesis of body structures (not to include venipuncture and cystocentesis) in other than emergency situations.
  - 1.3.8 The placement of tubes into closed body structures, such as chest tubes, in other than emergency situations (not to include urinary or IV catheters; see Section 1.6.2).
  - 1.3.9 Splinting or casting of broken bones in other than emergency situations.
  - 1.3.10 Euthanasia.
  - 1.3.11 Issue health certificates.
- 1.4 Levels of Supervision. All acts by support personnel and veterinary technicians not prohibited by Rule 1.2 and Rule 1.3 which constitute the practice of veterinary medicine under 24 **Del.C.** §3302(5) must be performed under the supervision of a licensed veterinarian(s). Levels of supervision are to include:
  - 1.4.1 Immediate Supervision - A licensed veterinarian is within direct eyesight and/or hearing range.
  - 1.4.2 Direct Supervision - A licensed veterinarian is physically present on the premises and is readily available.
  - 1.4.3 Indirect Supervision - A licensed veterinarian is not on the premises but is able to perform the duties of a veterinarian by maintaining communication with and is accessible to support personnel, such as by electronic means.
- 1.5 If the veterinarian concludes based on the initial examination (required by paragraph 1.1.1) that delegation is appropriate, support personnel may perform the following tasks only under the following supervision:
  - 1.5.1 Immediate supervision: intubation, urethral catheterization (except in the case of known urinary blockage or pre-existing urethral or urinary bladder disease); dental extractions with no periosteal elevation, no sectioning of tooth and no resectioning of bone.
  - 1.5.2 Direct supervision: anesthesia maintenance and dental procedures including, but not limited to, removal of calculus, soft deposits, plaque and stains, smoothing, filing, polishing of teeth.
- 1.6 If the veterinarian concludes based on the initial examination (required by paragraph 1.1.1) that delegation is appropriate, veterinary technicians may perform the following tasks only under the following supervision:
  - 1.6.1 Immediate supervision: induction of anesthesia.
  - 1.6.2 Direct supervision: intubation, anesthesia maintenance; arterial catheterization; urethral catheterization (except in the case of known urinary blockage or pre-existing urethral or urinary bladder disease); cystocentesis; dental extractions with no periosteal elevation, no sectioning of tooth and no resectioning of bone; and dental procedures including, but not limited to, removal of calculus, soft deposits, plaque and stains, smoothing, filing, polishing of teeth.
- 1.7 Veterinarians (24 **Del.C.** §3315(a)) and veterinary technicians (24 **Del.C.** §3320 (æ)) who are temporarily licensed shall be under the direct supervision of a licensed veterinarian.
- 1.8 Activities that may be performed under emergency conditions. Under conditions of emergencies, the following activities, which would be otherwise prohibited in the absence of veterinary supervision, may

be performed by veterinary technicians or support personnel prior to the veterinarian's initial examination:

- 1.8.1 application of tourniquets and/or pressure bandages to control hemorrhage,
- 1.8.2 administration of pharmacological agents, only to be performed after communication with a veterinarian authorized to practice in Delaware, and such veterinarian is either present or en route to the distressed animal,
- 1.8.3 administration of parenteral fluids,
- 1.8.4 resuscitative procedures,
- 1.8.5 application of temporary splints or bandages to prevent further injury to bones or soft tissues,
- 1.8.6 application of appropriate wound dressings and external supportive treatment in severe wound and burn cases,
- 1.8.7 external supportive treatment in heat prostration cases,
- 1.8.8 and any other reasonable treatments necessary to an animal's welfare in an emergency situation.

**10 DE Reg. 884 (11/01/06)**

**2.0 Unprofessional Conduct for Veterinarians (24 Del.C. §3316(a)(1))**

- 2.1 Unprofessional conduct in the practice of veterinary medicine shall include, but not be limited to, the following:
  - 2.1.1 Allowing support personnel to perform the acts forbidden under Section 1.2 or allowing licensed veterinary technicians to perform the acts forbidden under Section 1.3 of the Rules and Regulations.
  - 2.1.2 Allowing support personnel to perform tasks in Section 1.5 of the Rules and Regulations without the specified supervision or allowing veterinary technicians to perform the tasks in Section 1.6 without the specified supervision.
  - 2.1.3 Failing to be accessible to support or veterinary technician personnel by electronic means in a reasonable time frame to provide off-site supervision for activities requiring indirect supervision as required by Section 1.4 of the Rules and Regulations.
  - 2.1.4 Failing to arrange for supervision by another licensed veterinarian when not able to provide supervision as required by Section 1.4 of the Rules and Regulations.
  - 2.1.5 Representation of conflicting interests except by express consent of all concerned. A licensee represents conflicting interests if while employed by a buyer to inspect an animal for soundness he or she accepts a fee from the seller. Acceptance of a fee from both the buyer and the seller is prima facie evidence of fraud.
  - 2.1.6 Use by a veterinarian of any certificate, college degree, license, or title to which he or she is not entitled.
  - 2.1.7 Intentionally performing or prescribing treatment, which the veterinarian knows to be unnecessary, for financial gain.
  - 2.1.8 Placement of professional knowledge, attainments, or services at the disposal of a lay body, organization or group for the purpose of encouraging unqualified groups or individuals to perform surgery upon animals or to otherwise practice veterinary medicine on animals that they do not own.
  - 2.1.9 Destruction of any part of a patient's records before a minimum of three (3) years have elapsed from the last entry in the medical record shall be considered unprofessional conduct. Records are to include, but are not limited to, information such as written or electronic documentation, rabies records, radiographs, ultrasounds, laboratory, and histopathological results.
  - 2.1.10 Cruelty to animals. Cruelty to animals includes, but is not limited to, any definition of cruelty to animals under 11 **Del.C.** §1325.
    - 2.1.10.1 Animal housing (such as cages, shelters, pens and runs) should be designed with maintaining the animal in a state of relative thermal neutrality, avoiding unnecessary physical restraint, and providing sanitary conditions and convenient access to appropriate

food and water. If animals are group housed, they should be maintained in compatible groups without overcrowding.

2.1.10.2 Housing should be kept in good repair to prevent injury to the animal.

2.1.10.3 ~~Failure to take p~~Precautions should be taken to prevent the spread of communicable diseases in housing animals.

2.1.11 Improper labeling of prescription drugs. The package or label must contain:

2.1.11.1 Name, strength and quantity of the drug, and date dispensed;

2.1.11.2 Usage directions.

2.1.12 Failure to make childproof packaging available for prescription drugs upon the request of a client.

2.1.13 Misrepresenting continuing education hours to the Board.

2.1.14 Failure to obey a disciplinary order of the Board.

2.1.15 Prescribing medication without examining the animal(s) within a period of one year.

2.1.16 Advertising an emergency hospital or clinic or emergency services without including in the advertisement the hours during which such emergency services are provided and the availability of the veterinarian who is to provide the emergency services, or failing to provide such services during the hours advertised. The availability of the veterinarian who is to provide emergency service shall be specified as either "veterinarian on premises" or "veterinarian on call" The phrase "veterinarian on call" shall mean that a veterinarian is not present at the hospital, but is able to respond within a reasonable time to requests for emergency services and has been designated to so respond.

**5 DE Reg. 1897 (4/1/02)**

**5 DE Reg. 1962 (5/1/02)**

**6 DE Reg. 273 (9/1/02)**

**6 DE Reg. 950 (2/1/03)**

**10 DE Reg. 884 (11/01/06)**

### **3.0 Privileged Communications (24 Del.C. §3316(a)(7))**

3.1 Privileged Communications.

Veterinarians must protect the personal privacy of patients and clients by not willfully revealing privileged communications regarding the diagnosis and treatment of an animal.

The following are not considered privileged communications:

3.1.1 The sharing of veterinary medical information regarding the diagnosis and treatment of an animal when required by law, subpoena, or court order or when it becomes necessary to protect the health and welfare of other individuals or animals.

3.1.2 The sharing of veterinary medical information between veterinarians or facilities for the purpose of diagnosis or treatment of animals.

3.1.3 The sharing of veterinary medical information between veterinarians and peace officers, humane society officers, or animal control officers who are acting to protect the welfare of individuals or animals.

**10 DE Reg. 884 (11/01/06)**

### **4.0 Veterinary Premises & Equipment (24 Del.C. §3316(a)(9))**

4.1 The animal facility shall be kept clean. A regular schedule of sanitary maintenance is necessary, including the elimination of wastes.

4.2 Animal rooms, corridors, storage areas, and other parts of the animal facility shall be washed, scrubbed, vacuumed, mopped, or swept as often as necessary, using appropriate detergents and disinfectants to keep them free of dirt, debris, and harmful contamination.

4.3 Animal cages, racks, and accessory equipment, such as feeders and water utensils, shall be washed and sanitized as often as necessary to keep them physically clean and free from contamination. In

addition, cages should always be sanitized before new animals are placed in them. Sanitizing may be accomplished either by washing all soiled surfaces with a cleaning agent having an effective bactericidal action or with live steam or the equivalent thereof.

- 4.4 Cages or pens from which animal waste is removed by hosing or flushing shall be cleaned and suitably disinfected one or more times daily. Animals should be removed from cages during servicing in order to keep the animals dry.
- 4.5 If litter or bedding such as paper is used in animal cages or pens, it shall be changed as often as necessary to keep the animals clean.
- 4.6 Waste disposal must be carried out in accordance with good public health practice and federal and state regulations. Waste materials should be removed regularly and frequently so that storage of waste does not create a nuisance.
- 4.7 Biomedical waste such as culture plates, tubes, contaminated sponges, swabs, biologicals, needles, syringes, and blades, must be disposed of according to federal and state guidelines. Before disposing of blood soiled articles, they shall be placed in a leak-proof disposable container such as a plastic sack or a plastic-lined bag.
- 4.8 Proper refrigeration and sterilization equipment should be available.
- 4.9 Adequate safety precautions must be used in disposing animal carcasses and tissue specimens. An animal carcass shall be disposed of promptly according to federal and state law and regulations. If prompt disposal of an animal carcass is not possible, it shall be contained in a freezer or stored in a sanitary, non-offensive manner until such time as it can be disposed. Livestock shall be disposed of by any acceptable agricultural method.
- 4.10 The elimination or effective control of vermin shall be mandatory.

**10 DE Reg. 884 (11/01/06)**

**5.0 Qualification For Veterinary Licensure By Examination (24 Del.C. §3313) and by Reciprocity (24 Del.C. §3314)**

- 5.1 The applicant shall file the following documents:
  - 5.1.1 Completed application form obtained from the Board office. The application fee shall be set by the Division of Professional Regulation. The check for the application fee should be made payable to the State of Delaware.
  - 5.1.2 Official transcript from an AVMA approved veterinary college or university. If an applicant is not a graduate of an AVMA-accredited veterinary school or college, the applicant must possess either a certificate issued by the Educational Commission for Foreign Veterinary Graduates (ECFVG), or its successor, or a Certificate of Qualification issued by the Canadian Veterinary Medical Association, or its successor.
  - 5.1.3 Letters of good standing from any other jurisdictions in which the applicant is/ or has been licensed.
  - 5.1.4 North American Veterinary Licensing Examination (NAVLE) score or its successor or both the official National Board Examination (NBE) and Clinical Competency Test (CCT) scores, unless the reciprocity applicant meets the statutory exemptions in 24 Del.C. §3309.
  - 5.1.5 Check or money order for the amount established by the Division of Professional Regulation. The license fee shall be set by the Division of Professional Regulation. Fees should be made payable to the "State of Delaware."
- 5.2 Only completed application forms will be accepted. ~~In the case of incomplete application forms, omissions will be noted to the applicant.~~ Any information provided to the Board is subject to verification.
- 5.3 Applications for any licensure submitted by final year veterinary students enrolled in an AVMA accredited university for the purpose of taking the NAVLE exam will be considered complete only upon proof of the applicant's graduation. Such applicants must demonstrate probability of graduation and will not be considered for any licensure until proof of graduation is submitted to the Board.

**10 DE Reg. 884 (11/01/06)**

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## **6.0 Character Of Examination for Veterinarians- North American Veterinary Licensing Examination (NAVLE) (24 Del.C. §3306)**

- 6.1 Examination for licensure to practice veterinary medicine in the State of Delaware shall consist of the North American Veterinary Licensing Examination (NAVLE) or its successor.
  - 6.1.1 The passing score for the NAVLE shall be the score as recommended by the National Board of Veterinary Medical Examiners or its successor.

**10 DE Reg. 884 (11/01/06)**

## **7.0 Reciprocity for Veterinarians (24 Del.C. §3314)**

Applications for licensure by reciprocity shall be the same application used for licensure by examination and be subject to the same application requirements set forth in 24 Del.C. §3314.

**10 DE Reg. 884 (11/01/06)**

## **8.0 Licensure - Renewal (24 Del.C. §3309)**

- 8.1 All licenses are renewed biennially (every 2 years). A licensee may have his/her license renewed by submitting a renewal application to the Board by the renewal date and upon payment of the renewal fee prescribed by the Division of Professional Regulation along with evidence of completion of continuing education requirements. Continuing education requirements for renewal are specified in Section 9.0 for veterinarians and Section 14 for veterinary technicians. The failure of the Board to give, or the failure of the licensee to receive, notice of the expiration date of a license shall not prevent the license from becoming invalid after its expiration date.
- 8.2 Any licensee who fails to renew his/her license by the renewal date may still renew his/her license during the one (1) year period immediately following the renewal date provided the licensee pay a late fee established by the Division of Professional Regulation in addition to the established renewal fee and submitting the continuing education requirements for renewal as specified in Section 9.0 for veterinarians and Section 14 for veterinary technicians.

**10 DE Reg. 884 (11/01/06)**

## **9.0 Continuing Education for Veterinarians (24 Del.C. §3309(b))**

- 9.1 Any veterinarian actively licensed to practice in the State of Delaware shall meet the following continuing education requirements to the satisfaction of the Board.
  - 9.1.1 Twenty-four (24) hours of approved certified continuing education credits must be completed for the immediate two year period preceding each biennial license renewal date.
  - 9.1.2 The number of credit hours shall be submitted to the Board with each biennial license renewal application.
    - 9.1.2.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 9.1.1.
    - 9.1.2.2 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion can be submitted;
    - 9.1.2.3 Licensees selected for random audit are required to supplement the attestation with attendance verification as provided in 9.1.2.4.
    - 9.1.2.4 A log of CE on a form approved by the Board shall be maintained during the licensure period to be submitted if the renewal application is selected for CE audit. Random audits will be performed by the Board to ensure compliance with the CE requirement. Licensees selected for the random audit shall submit the log and attendance verification.
    - 9.1.2.5 The Board shall review all documentation submitted by licensees pursuant to the continuing education audit. If the Board determines that the licensee has met the continuing education requirements, his or her license shall remain in effect. If the Board determines that the licensee has not met the continuing education requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative

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## PROPOSED REGULATIONS

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Procedures Act. The hearing will be conducted to determine if there are any extenuating circumstances justifying the noncompliance with the continuing education requirements. Unjustified noncompliance with the continuing education requirements set forth in these regulations shall constitute a violation of 24 Del.C. §3316(a)(13) and the licensee may be subject to one of more of the disciplinary sanctions set forth in 24 Del.C. §3317.

9.1.3 Proration: Continuing education requirements shall be prorated for new licensees only.

9.1.3.1 No continuing education is required for fewer than six months of licensure.

9.1.3.2 Six hours of continuing education are required after at least six months but less than twelve months of licensure.

9.1.3.3 Twelve hours of continuing education are required after at least twelve months but less than twenty-four months of licensure.

9.1.3.4 Twenty-four hours of continuing education are required after twenty-four months of licensure.

9.1.34 A veterinarian may apply to the Board in writing for an extension of the period of time needed to complete the continuing education requirement for good cause such as illness, extended absence from the country, or unique personal hardship which is not the result of professional negligence. Application for extension shall be made in writing to the Board by the applicant for renewal and must be received by the Board no later than 60 days prior to the biennial license renewal date.

9.1.45 The Board has the power to waive any part of the entire continuing education requirement. Exemptions to the continuing education requirement may be granted due to prolonged illness or other incapacity. Application for exemption shall be made in writing to the Board by the applicant for renewal and must be received by the Board no later than 60 days prior to the biennial license renewal date.

### 9.2 Continuing Education Requirements for Reinstatement of Lapsed License

9.2.1 Any veterinarian whose license to practice in the State of Delaware has lapsed and who has applied for reinstatement shall meet the following continuing education requirements to the satisfaction of the Board.

9.2.1.1 *Lapse of 12 to 24 months.* Twenty-four (24) hours of continuing education credits must be completed. The 24 hours of continuing education credits must have been completed within 2 years prior to the request for reinstatement.

9.2.1.2 *Lapse of over 24 months.* Thirty-six (36) hours of continuing education credits must be completed. The 36 hours of continuing education credits must have been completed within 4 years prior to the request for reinstatement.

### 9.3 Continuing Education Requirements for Reinstatement of Inactive License

9.3.1 Twenty-four (24) hours of continuing education credits must be submitted for licensees on the inactive roster who wish to remove their license from inactive status. The 24 hours of continuing education credits must have been completed within 2 years prior to the request for removal from inactive status.

9.4 The Board may approve continuing education courses or sponsors upon written application on Board supplied forms. In addition, the Board may approve continuing education courses or sponsors on its own motion.

9.5 The following organizations are approved for formal continuing education activities.

9.5.1 AVMA.

9.5.2 AVMA accredited schools.

9.5.3 Federal/State/County Veterinary Associations & USDA.

9.5.4 *Compendium on Continuing Education for the Practicing Veterinarian*; NOAH; VIN.

9.5.5 Registry of Approved Continuing Education (RACE) courses.

9.6 Accreditation by the Board of continuing education courses will be based upon program content. Continuing education courses shall be directed toward improvement, advancement, and extension of professional skill and knowledge relating to the practice of veterinary medicine.

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- 9.6.1 University course work, subject to Board approval.
  - 9.6.2 Veterinary course work completed prior to graduation may be approved for continuing education credit for the first renewal period after graduation provided the course work was completed no more than 2 1/2 years before the renewal date.
  - 9.6.3 Government Agencies.
  - 9.6.4 Other forms of CE as long as and the activity is approved by the Board.
- 9.7 The Board may at any time re-evaluate an accredited course or sponsor and withdraw future approval of a previously accredited continuing education course or sponsor.

**10 DE Reg. 884 (11/01/06)**

**11 DE Reg. 88 (07/01/07)**

## **10.0 Voluntary Treatment Option**

- 10.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.
- 10.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.
- 10.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).
- 10.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.
- 10.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 10.8 of this section.
- 10.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:
  - 10.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.
  - 10.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her

designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

- 10.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.
- 10.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.
- 10.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.
- 10.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.
- 10.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.
- 10.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.
- 10.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.
- 10.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

#### **11.0 Qualification for Licensure by Examination as a Veterinary Technician (24 Del.C. §3319)**

- 11.1 The applicant shall file the following documents:
  - 11.1.1 Completed application form obtained from the Board office. The application fee shall be set by the Division of Professional Regulation. The check for the application fee should be made payable to the State of Delaware.
  - 11.1.2 Official transcript from an AVMA-accredited veterinary technician program or from a foreign veterinary program approved by the AVMA, ~~or from documentation of completion of acceptable educational and/or experiential alternatives. For a period of seven years following the effective date of 24 Del.C. §3319(a)(1),~~ the following educational and/or experience qualifications shall be considered acceptable alternatives for the purpose of veterinary technician licensure for a period of seven years following the enactment of the Law §3319(a)(1), provided that the Board may shorten this period: The following qualifications shall be considered acceptable alternatives only if the applicant's application has been approved by the Board no later than October 1, 2013.

- 11.1.2.1 a baccalaureate degree in animal science-related field as approved by the Board and 2625 hours of practical experience related to animal care and handling under the direct supervision of a licensed veterinarian(s),
- 11.1.2.2 a degree from a veterinary technician program that is not accredited by the American Veterinary Medical Association, as approved by the Board, and 2625 hours of practical experience related to animal care and handling under the direct supervision of a licensed veterinarian,
- 11.1.2.3 a baccalaureate degree in biology, chemistry, psychology, physics, or similar scientific field of study as approved by the Board and 3500 hours of practical experience related to animal care and handling under the direct supervision of a licensed veterinarian(s),
- 11.1.2.4 completion of 60 credit hours of coursework in biology, chemistry, psychology, physics, or similar scientific field of study at the postsecondary educational level, as approved by the Board, and 5250 hours of practical experience related to animal care and handling under the direct supervision of a licensed veterinarian(s),
- 11.1.2.5 or a period of 7000 hours of practical experience related to animal care and handling under the direct supervision of a licensed veterinarian(s).
- 11.1.3 Letters of good standing from any other jurisdictions in which the applicant is/or has been licensed, certified or registered.
- 11.1.4 Veterinary Technician National Examination (VTNE) or its successor.
- 11.1.5 Check or money order for the license fee. The license fee shall be set by the Division of Professional Regulation. Fees should be made payable to the "State of Delaware".
- 11.2 Proof of education shall consist of a transcript sent directly from school to the Board.
- 11.3 Proof of practical experience in animal care and handling shall consist of a notarized letter of endorsement from the supervising veterinarian(s).
- 11.4 Only completed application forms will be accepted. ~~In the case of incomplete application forms, omissions will be noted to the applicant.~~ Any information provided to the Board is subject to verification.
- 11.5 Applications for any licensure submitted by final year veterinary technician students enrolled in an AVMA-accredited program for the purpose of taking the VTNE exam will be considered complete only upon proof of the applicant's graduation. Such applicants must demonstrate probability of graduation and will not be considered for any licensure until proof of graduation is submitted to the Board.

**10 DE Reg. 884 (11/01/06)****12.0 Character of Examination for Veterinary Technicians – Veterinary Technician National Examination (VTNE) (24 Del.C. §3306)**

- 12.1 Examination for licensure to practice as a veterinary technician in the State of Delaware shall consist of the Veterinary Technician National Examination (VTNE) or its successor.
  - 12.1.1 The passing score for the VTNE or its successor shall be the score as recommended by the American Association of Veterinary State Boards or its successor.

**10 DE Reg. 884 (11/01/06)****13.0 Reciprocity for Veterinary Technicians (24 Del.C. §3320)**

Applications for licensure by reciprocity shall be the same application used for licensure by examination and be subject to the application requirements set forth in 24 Del.C. §3320.

**10 DE Reg. 884 (11/01/06)****14.0 Continuing Education for Veterinary Technicians (24 Del.C. §3309(b))**

- 14.1 Any veterinary technician actively licensed to practice in the State of Delaware shall meet the following continuing education requirements to the satisfaction of the Board.

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## PROPOSED REGULATIONS

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- 14.1.1 Twelve (12) hours of approved certified continuing education credits must be completed for the immediate two-year period preceding each biennial license renewal date.
- 14.1.2 The number of credit hours shall be submitted to the Board with each biennial license renewal application.
- 14.1.2.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 14.1.1.
- 14.1.2.2 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion can be submitted;
- 14.1.2.3 Licensees selected for random audit are required to supplement the attestation with attendance verification as provided in 14.1.2.4.
- 14.1.2.4 A log of CE on a form approved by the Board shall be maintained during the licensure period to be submitted if the renewal application is selected for CE audit. Random audits will be performed by the Board to ensure compliance with the CE requirement. Licensees selected for the random audit shall submit the log and attendance verification.
- 14.1.2.5 The Board shall review all documentation submitted by licensees pursuant to the continuing education audit. If the Board determines that the licensee has met the continuing education requirements, his or her license shall remain in effect. If the Board determines that the licensee has not met the continuing education requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. The hearing will be conducted to determine if there are any extenuating circumstances justifying the noncompliance with the continuing education requirements. Unjustified noncompliance with the continuing education requirements set forth in these regulations shall constitute a violation of 24 Del.C. §3316(a)(13) and the licensee may be subject to one or more of the disciplinary sanctions set forth in 24 Del.C. §3317.
- 14.1.3 Proration: Continuing education requirements shall be prorated for new licensees only.
- 14.1.3.1 No continuing education is required for fewer than six months of licensure.
- 14.1.3.2 Three hours of continuing education are required after at least six months but less than twelve months of licensure.
- 14.1.3.3 Six hours of continuing education are required after at least twelve months but less than twenty-four months of licensure.
- 14.1.3.4 Twelve hours of continuing education are required after twenty-four months of licensure.
- 14.1.34 A veterinary technician may apply to the Board in writing for an extension of the period of time needed to complete the continuing education requirement for good cause such as illness, extended absence from the country, or unique personal hardship which is not the result of professional negligence. Application for extension shall be made in writing to the Board by the applicant for renewal and must be received by the Board no later than 60 days prior to the biennial license renewal date.
- 14.1.45 The Board has the power to waive any part of the entire continuing education requirement. Exemptions to the continuing education requirement may be granted due to prolonged illness or other incapacity. Application for exemption shall be made in writing to the Board by the applicant for renewal and must be received by the Board no later than 60 days prior to the biennial license renewal date.
- 14.2 Continuing Education Requirements for Reinstatement of Lapsed License
- 14.2.1 Any veterinary technician whose license to practice in the State of Delaware has lapsed and who has applied for reinstatement shall meet the following continuing education requirements to the satisfaction of the Board.
- 14.2.1.1 *Lapse of 12 to 24 months.* Twelve (12) hours of continuing education credits must be completed. The 12 hours of continuing education credits must have been completed within 2 years prior to the request for reinstatement.

- 14.2.1.2 *Lapse of over 24 months.* Eighteen (18) hours of continuing education credits must be completed. The 18 hours of continuing education credits must have been completed within 4 years prior to the request for reinstatement.
- 14.3 Continuing Education Requirements for Reinstatement of Inactive License
  - 14.3.1 Twelve (12) hours of continuing education credits must be submitted for licensees on the inactive roster who wish to remove their license from inactive status. The 12 hours of continuing education credits must have been completed within 2 years prior to the request for removal from inactive status.
- 14.4 The Board may approve continuing education courses or sponsors upon written application on Board supplied forms. In addition, the Board may approve continuing education courses or sponsors on its own motion.
- 14.5 The following organizations are approved for formal continuing education activities.
  - 14.5.1 AVMA.
  - 14.5.2 AVMA accredited schools.
  - 14.5.3 Federal/State/County Veterinary Associations & USDA.
  - 14.5.4 *The NAVTA Journal*, NAVTA-approved online continuing education
  - 14.5.5 Registry of Approved Continuing Education (RACE) courses.
- 14.6 Accreditation by the Board of continuing education courses will be based upon program content. Continuing education courses shall be directed toward improvement, advancement, and extension of professional skill and knowledge relating to the practice of veterinary medicine.
  - 14.6.1 University course work, subject to Board approval.
  - 14.6.2 Veterinary technician program course work completed prior to graduation may be approved for continuing education credit for the first renewal period after graduation provided the course work was completed no more that 2 1/2 years before the renewal date.
  - 14.6.3 Government Agencies.
  - 14.6.4 Other forms of CE as long as and the activity is approved by the Board.
- 14.7 The Board may at any time re-evaluate an accredited course or sponsor and withdraw future approval of a previously accredited continuing education course or sponsor.

**10 DE Reg. 884 (11/01/06)**

**11 DE Reg. 88 (07/01/07)**

## **15.0 Unprofessional Conduct for Veterinary Technicians (24 Del.C. §3316(a)(1))**

- 15.1 Unprofessional conduct as a veterinary technician shall include, but not be limited to, the following:
  - 15.1.1 performing the acts forbidden under Section 1.3 of the Rules and Regulations.
  - 15.1.2 performing the tasks in Section 1.6 of the Rules and Regulations without the specified supervision.
  - 15.1.3 Cruelty to animals. Cruelty to animals includes, but is not limited to, any definition of cruelty to animals under 11 **Del.C.** §1325.
  - 15.1.4 Misrepresenting continuing education hours to the Board.
  - 15.1.5 Failure to obey a disciplinary order of the Board.
  - 15.1.6 Use by a veterinary technician of any certificate, college degree, license, or title to which he or she is not entitled.
  - 15.1.7 Placement of veterinary technical knowledge, attainments, or services at the disposal of a lay body, organization or group for the purpose of encouraging unqualified groups or individuals to perform surgery upon animals or to otherwise practice veterinary medicine on animals that they do not own.

**10 DE Reg. 884 (11/01/06)**

**16.0 Crimes substantially related to the provision of Veterinary Medicine**

- 16.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit the following crimes, is deemed to be a crime substantially related to the provision of Veterinary Medicine in the State of Delaware without regard to the place of conviction:
- 16.1.1 Reckless endangering in the first degree. 11 **Del.C.** §604
  - 16.1.2 Abuse of a pregnant female in the second degree. 11 **Del.C.** §605
  - 16.1.3 Abuse of a pregnant female in the first degree. 11 **Del.C.** §606
  - 16.1.4 Assault in the second degree. 11 **Del.C.** §612
  - 16.1.5 Assault in the first degree. 11 **Del.C.** §613
  - 16.1.6 Terroristic threatening. 11 **Del.C.** §621 Felony
  - 16.1.7 Unlawfully administering drugs. 11 **Del.C.** §625
  - 16.1.8 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 **Del.C.** §626
  - 16.1.9 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633
  - 16.1.10 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634
  - 16.1.11 Murder in the second degree. 11 **Del.C.** §635
  - 16.1.12 Murder in the first degree. 11 **Del.C.** §636
  - 16.1.13 Incest. 11 **Del.C.** §766
  - 16.1.14 Unlawful sexual contact in the first degree. 11 **Del.C.** §769
  - 16.1.15 Rape in the fourth degree. 11 **Del.C.** §770
  - 16.1.16 Rape in the third degree. 11 **Del.C.** §771
  - 16.1.17 Rape in the second degree. 11 **Del.C.** §772
  - 16.1.18 Rape in the first degree. 11 **Del.C.** §773
  - 16.1.19 Sexual extortion. 11 **Del.C.** §776
  - 16.1.20 Bestiality. 11 **Del.C.** §777
  - 16.1.21 Continuous sexual abuse of a child. 11 **Del.C.** §778
  - 16.1.22 Dangerous crime against a child. 11 **Del.C.** §779
  - 16.1.23 Female genital mutilation. 11 **Del.C.** §780
  - 16.1.24 Unlawful imprisonment in the first degree. 11 **Del.C.** §782
  - 16.1.25 Kidnapping in the second degree. 11 **Del.C.** §783
  - 16.1.26 Kidnapping in the first degree. 11 **Del.C.** §783A
  - 16.1.27 Dealing in children. 11 **Del.C.** §1100
  - 16.1.28 Endangering the welfare of a child. 11 **Del.C.** §1102
  - 16.1.29 Sexual exploitation of a child. 11 **Del.C.** §1108
  - 16.1.30 Unlawfully dealing in child pornography. 11 **Del.C.** §1109
  - 16.1.31 Possession of child pornography. 11 **Del.C.** §1111
  - 16.1.32 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112
  - 16.1.33 Sexual solicitation of a child. 11 **Del.C.** §1112A
  - 16.1.34 Obstructing the control and suppression of rabies. 11 **Del.C.** §1248
  - 16.1.35 Offenses against law-enforcement animals. 11 **Del.C.** §1250
  - 16.1.36 Use of an animal to avoid capture. 11 **Del.C.** §1257A (Felony)
  - 16.1.37 Hate crimes. 11 **Del.C.** §1304 (Felony)
  - 16.1.38 Cruelty to animals. 11 **Del.C.** §1325
  - 16.1.39 The unlawful trade in dog or cat by-products. 11 **Del.C.** §1325A
  - 16.1.40 Animals; fighting and baiting prohibited. 11 **Del.C.** §1326
  - 16.1.41 Maintaining a dangerous animal. 11 **Del.C.** §1327

- 16.1.42 Abusing a corpse. 11 **Del.C.** §1332
  - 16.1.43 Promoting prostitution in the second degree. 11 **Del.C.** §1352
  - 16.1.44 Promoting prostitution in the first degree. 11 **Del.C.** §1353
  - 16.1.45 Possession of a weapon in a Safe School and Recreation Zone. 11 **Del.C.** §1457 (Felony)
  - 16.1.46 Violations. 16 **Del.C.** §1136
  - 16.1.47 Prohibited acts A; penalties. 16 **Del.C.** §4751
  - 16.1.48 Prohibited acts B; penalties. 16 **Del.C.** §4752
  - 16.1.49 Unlawful delivery of noncontrolled substance. 16 **Del.C.** §4752A
  - 16.1.50 Prohibited acts C; penalties. 16 **Del.C.** §4753
  - 16.1.51 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3, 4 methylenedioxymethamphetamine (MDMA). 16 **Del.C.** §4753A
  - 16.1.52 Prohibited acts D; penalties. 16 **Del.C.** §4754
  - 16.1.53 Possession and delivery of noncontrolled prescription drug. 16 **Del.C.** §4754A
  - 16.1.54 Distribution to persons under 21 years of age; penalties. 16 **Del.C.** §4761
  - 16.1.55 Purchase of drugs for minors; penalties. 16 **Del.C.** §4761A
  - 16.1.56 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property; penalties; defenses. 16 **Del.C.** §4767
  - 16.1.57 Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship; penalties; defenses. 16 **Del.C.** §4768
  - 16.1.58 Unauthorized Acts against a Service Guide or Seeing Eye Dog (class D felony). 7 **Del.C.** §1717
- 16.2 Crimes substantially related to the practice of Veterinary Medicine shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

**8 DE Reg. 1105 (02/01/05)**

**10 DE Reg. 884 (11/01/06)**

**11 DE Reg. 88 (07/01/07)**

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**DIVISION OF PROFESSIONAL REGULATION**  
**3900 Board of Clinical Social Work Examiners**

Statutory Authority: 24 Delaware Code, Section 3906(a)(1) (24 **Del.C.** §3906(a)(1))  
24 **DE. Admin. Code** 3900

**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §3906(a)(1), the Board of Clinical Social Work Examiners has proposed revisions to its rules and regulations.

A public hearing will be held on January 5, 2009 at 9:15 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Clinical Social Work Examiners, 861 Silver Lake Boulevard, Dover, Delaware 11904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board proposes amendments to Rule 4.0, which addresses professional supervision. Section 3907(a)(1) of Title 24 of the Delaware Code provides that applicants for licensure must have experience "under professional supervision acceptable to the Board." Rule 4.0 is designed to clarify this statutory provision.

# PROPOSED REGULATIONS

Rule 4.1, which specifically defines "professional supervision acceptable to the Board," is amended to provide clear and objective standards for a supervisory relationship. The revised Rule follows the principles set forth in the Association of Social Work Boards' Model Social Work Practice Act.

Rule 4.1.1 is added to address the circumstance where an applicant is unable to locate a licensed clinical social worker to provide supervision. The amendment requires the applicant to provide documentation that a licensed clinical social worker was, in fact, "not available."

Rule 4.2 is added to provide that applicants for licensure may not simultaneously supervise one another. This amendment will prohibit supervisory relationships that may be compromised by conflicts of interest. The amendments will strengthen and clarify the requirements for supervisory relationships. Therefore, the proposed revisions will serve to protect the public from unsafe practices and enhance practitioner competence.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

## 3900 Board of Clinical Social Work Examiners

### *(Break in Continuity of Sections)*

#### 4.0 Professional Supervision

- 4.1 ~~Professional supervision that is acceptable to the Board shall be that amount of personal oversight, conducted directly by the licensed clinical social worker, necessary and consistent with the applicant's level of skill, education and experience, to enable both the applicant and the licensed clinical social worker to attest that the applicant has attained the required acceptable clinical social work experience including achievement of the practice competencies and practice skills set forth in Section 3.0 of these Rules and Regulations means a formalized, interactional, professional relationship between a supervisor and a social worker that provides evaluation and direction over the supervisee's practice of clinical social work and promotes continued development of the social worker's knowledge, skills, and abilities to engage in the practice of clinical social work in an ethical and competent manner.~~
- 4.1.1 ~~When professional supervision by a licensed clinical social worker is not available, the applicant may be supervised by a master's level degree social worker, a licensed psychologist, or a licensed psychiatrist. Effective June 1, 2009, to establish that a licensed clinical social worker is or was not available to provide supervision, the applicant shall submit a notarized statement, on a form provided by the Board, explaining the efforts made to obtain such supervision. The Board has the discretion to accept or reject the applicant's statement that supervision by a licensed clinical social worker is or was not available.~~
- 4.2 ~~Professional supervision is not acceptable to the Board where applicants for licensure have simultaneously supervised one another.~~
- 4.23 The amount of supervisory contact shall be at least one hour per week during the supervised period. This contact may be on a one-to-one face-to-face basis or by live videoconferencing; provided, however, that supervision by live videoconferencing shall not exceed fifty percent (50 %) of the total supervision in any month. Supervision by telephone or e-mail is expressly not permitted.
- 4.34 The Board shall require submission of the following information from the supervisor(s): supervisor's name; business address; license number, professional field and State in which the license was granted during the period of supervision; agency in which the supervision took place (if applicable); the number of qualifying practice hours toward the statutory requirement; the number of one-to-one face-to-face supervisory hours; and the number of live videoconferencing supervisory hours (if applicable).
- 4.45 A licensed Psychiatrist shall be defined as a licensed Medical Doctor with a specialty in psychiatry or a licensed Doctor of Osteopathic Medicine with a specialty in psychiatry.

5 DE Reg. 1072 (11/1/01)

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\*Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:

[3900 Board of Clinical Social Work Examiners](#)

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## DEPARTMENT OF TRANSPORTATION Division of Motor Vehicles

Statutory Authority: 21 Delaware Code, Sections 302, 2603, 2611 and 2621 (21 Del.C. §§302, 2603, 2611 and 2621)  
21 DE Admin. Code 2213

### PUBLIC NOTICE

#### 2213 Emergency Vehicle Operators, Age of EVO Permit Holders

The Delaware Division of Motor Vehicles gives notice of intent to adopt proposed Division of Motor Vehicles Regulation 2213, which replaces current Regulation 2213, relating to the issuance of non-commercial driver licenses and emergency vehicle operators documents. This regulation incorporates changes due to the passage of Senate Bill 208 during the 144<sup>th</sup> General Assembly.

Any person who wishes to make written suggestions, briefs or other written materials concerning this proposed regulation must submit the same to Scott Vien, Chief of Driver Services, Delaware Division of Motor Vehicles, P.O. Box 698, Dover, Delaware 19903 or by fax to (302) 739-2602 by December 31, 2008.

#### 2213 Emergency Vehicle Operators, Age of EVO Permit Holders Issuance of Non-Commercial Driver Licenses and Emergency Vehicle Operators Documents (Formerly Regulation No. 81)

##### 1.0 Authority

~~This regulation confirms and renders official the present practice of not issuing Emergency Vehicle Operator Permits to anyone who has not reached the age of 18 years, and who has not had at least one year of driving experience.~~

The authority to promulgate this regulation is 21 Del.C. §302, 21 Del.C. §2603, 21 Del.C. §2611, and 21 Del.C. §2621.

##### 2.0 Purpose

~~This regulation is in accord with Title 21, Section 2707 (a); namely, a Class "A" license shall not be issued to any person under the age of 16 years. A Class "B" or Class "C" license shall not be issued to any person under the age of 18 years nor to any person 18 years of age or older who has not had at least 1 year's previous experience as an operator of a motor vehicle.~~

This regulation confirms and renders official the current practice of issuing a non-commercial driver license (non-CDL) to fire fighters, farmers, and operators of authorized emergency vehicles and producing emergency vehicle operator documents on behalf of the Delaware Fire School.

##### 3.0 Applicability

~~Persons who are 18 years of age or older, who have 1 year's driving experience, who hold a valid Class "A" license and a valid Emergency Vehicle Operators permit are permitted to drive any emergency vehicle provided permission is granted by the fire company, fire chief, or other relevant authority.~~

Commercial driver license (CDL) provisions are waived for those operating fire fighting equipment, farm vehicles, emergency mobile communication units, commercial motor vehicles for military purposes, recreational vehicles or trailers used solely for recreational purposes, and other emergency

# PROPOSED REGULATIONS

vehicles in accordance with 21 **Del.C.** §2621. When operating a commercial motor vehicle as defined by 21 **Del.C.** §2603(7) under the waiver provisions for farmers, fire fighters, and emergency response vehicle operators in 21 **Del.C.** §2621(a)(1), (a)(2), (a)(5), and (a)(6) the operators are required to hold a non-CDL Class A or non-CDL Class B in accordance with 21 **Del.C.** §2611(b)(1).

## 4.0 Definitions

The following words and terms, when used in this regulation, should have the following meaning unless the context clearly states otherwise:

**"Commercial Driver License (CDL)"** means a license issued in accordance with the requirements of 21 **Del.C.** Chapter 26 which authorizes the holder to operate a certain class or classes of a commercial motor vehicle. The classes of a CDL are as follows:

**CDL CLASS A** - Required for the operation of vehicles with a registered, actual, or gross vehicle weight rating (GVWR) of 26,001 or more pounds, and the vehicle is towing a vehicle with a registered, actual, or GVWR of 10,000 or more pounds.

**CDL CLASS B** - Required for the operation of vehicles with a registered, actual, or GVWR of 26,001 or more pounds and not towing a vehicle with a GVWR of 10,000 or more pounds.

**CDL CLASS C** - Required for vehicles with a GVWR less than 26,001 pounds when the vehicle is designed to transport 16 or more passengers, including the driver, or for vehicles required to be placarded for carrying hazardous materials.

**"Commercial Motor Vehicle (CMV)"** means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

"Has a gross combination weight rating (GCWR) of 26,001 pounds or more inclusive of a towed unit(s) with a gross vehicle weight rating (GVWR) of more than 10,000 pounds; or

"Has a gross vehicle weight rating (GVWR) of 26,001 pounds or more; or

"Is designed to transport 16 or more passengers, including the driver; or

"Is of any size and is required to be placarded for the transportation of hazardous materials.

**"Non-Commercial Driver License (non-CDL) Class A"** means a license issued in accordance with the requirements of 21 **Del.C.** Chapter 26 which authorizes the holder to operate the same CMVs as the CDL Class A, but only when operating farm, fire fighting, and other authorized emergency vehicles under the commercial driver license waiver defined in 21 **Del.C.** §2621.

**"Non-Commercial Driver License (non-CDL) Class B"** means a license issued in accordance with the requirements of 21 **Del.C.** Chapter 26 which authorizes the holder to operate the same CMVs as the CDL Class B, but only when operating farm, fire fighting, and other authorized emergency vehicles under the commercial driver license waiver defined in 21 **Del.C.** §2621.

## 5.0 Substance of Regulation

### 5.1 Non-CDL Issued to Farmers

- 5.1.1 Those persons who operate farm vehicles may be issued a non-CDL provided they hold a valid Delaware driver license, are at least 18 years of age, have one year driving experience, pay the appropriate license upgrade fee, and meet the requirements of this regulation.
- 5.1.2 Those applying for a non-CDL for farming purposes must pass the non-CDL general knowledge test and a road test in a representative farm vehicle. Pre-trip and skills tests are not required. Either a non-CDL Class A or non-CDL Class B will be issued based upon the vehicle classification type used for the road test.
- 5.1.3 Out-of-state non-CDLs are not transferable into this State as a non-CDL, since the requirements for a non-CDL vary between jurisdictions. An out-of-state non-CDL may be transferred as a Class D operator's license.
- 5.1.4 Motorcycle and taxicab endorsements may be recorded on a non-CDL, but commercial motor vehicle endorsements (endorsement codes H, N, P, Q, R, S, T, and X) will not be used in conjunction with the non-CDL.

5.1.5 The division may not issue a permanent non-CDL. If the driver holds a permanent Class D license at the time of non-CDL issuance, the driver will be required to surrender the permanent Class D license. A permanent Class D license will not be reissued if the driver's non-CDL is surrendered or downgraded.

## 5.2 Emergency Vehicle Operator (EVO) Cards

5.2.1 Those persons operating fire fighting equipment, ambulances, and other emergency vehicles as defined by 21 Del. C. § 4106(e) in this State must pass a training course conducted by the Delaware Fire School before operating emergency response equipment. When the training is successfully completed, the fire school will issue a Certified Emergency Vehicle Operator Certificate. This certificate must be presented to the Division of Motor Vehicles (DMV) with all required signatures. DMV will then issue an Emergency Vehicle Operator (EVO) card after collecting a \$5.00 fee for the EVO card.

5.2.2 DMV personnel must type in the information displayed on the EVO card and take the applicant's picture every time an EVO card is issued.

5.2.3 The DMV does not maintain an EVO database. This means the DMV does not know who was previously issued an EVO card nor does the DMV track who is currently authorized to have an EVO card because the EVO program is managed and controlled by the local fire companies and the Delaware State Fire School. Replacement cards for an old or damaged EVO card will be issued for no fee when the old or damaged card is presented to be exchanged. There is no expiration date for the EVO card.

## 5.3 Non-CDL issued to Fire fighters

5.3.1 The Delaware Fire School issues a Certified Emergency Vehicle Operator Certificate. This certificate when signed by the chief officer and director of the Delaware State Fire School indicates that the applicant has completed the training needed to safely operate fire fighting equipment. Upon presentation of this certificate to the DMV, the applicant will be issued an EVO card and non-CDL.

5.3.2 Those persons who operate fire fighting equipment may be issued a non-CDL provided they hold a valid Delaware driver license, are at least 18 years of age, have one year of driving experience, and meet the requirements of this regulation. A fee will not be charged for a person upgrading to a non-CDL issued under the fire fighter waiver provision.

5.3.3 The local fire chief is responsible for training and testing those who operate fire fighting equipment. Therefore, the DMV will not test fire fighting equipment operators. A non-CDL Class A or non-CDL Class B license will be issued based upon the fire fighting equipment being driven by the applicant.

5.3.4 Out-of-state non-CDLs are not transferable into this State as a non-CDL since the requirements for the non-CDL vary between jurisdictions. An out-of-state non-CDL may be transferred as a Class D operator's license.

5.3.5 Motorcycle and taxicab endorsements may be recorded on a non-CDL, but commercial motor vehicle endorsements (endorsement codes H, N, P, Q, R, T, X and S) will not be used in conjunction with the non-CDL.

5.3.6 The DMV may not issue a permanent non-CDL. If the driver holds a permanent Class D license at the time of non-CDL issuance, the driver will be required to surrender the permanent license. A permanent Class D license will not be reissued if the driver's non-CDL is surrendered or downgraded.

## **6.0 Severability**

If any part of this regulation is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed, and the remaining portions shall remain in full force and effect under Delaware law.

## **7.0 Effective Date**

This regulation shall be effective 10 days from the date the order is signed and it is published in its final form in the Register of Regulations in accordance with 29 Del.C. § 10118(e).

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**Symbol Key**

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **[Bracketed Bold language]** indicates text added at the time the final order was issued. ~~**[Bracketed-stricken through]**~~ indicates language deleted at the time the final order was issued.

**Final Regulations**

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the **Register of Regulations**. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the **Register of Regulations**, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

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**DEPARTMENT OF EDUCATION****OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)  
(14 **Del.C.** §122(b) and §154(e))  
14 **DE Admin. Code** 245

**REGULATORY IMPLEMENTING ORDER****245 Michael C. Ferguson Achievement Awards Scholarship****I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to reauthorize 14 **DE Admin. Code** 245 Michael C. Ferguson Achievement Awards Scholarship with no changes.

Notice of the proposed regulation was published in the News Journal and the *Delaware State News* on Thursday, October 2, 2008, in the form hereto attached as *Exhibit "A"*. No comments were received.

**II. Findings of Facts**

The Secretary finds that it is appropriate to reauthorize 14 **DE Admin. Code** 245 Michael C. Ferguson Achievement Awards Scholarship with no changes.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 245 Michael C. Ferguson Achievement Awards Scholarship. Therefore, pursuant to 14 **Del.C.** §122(b), 14 **DE Admin. Code** 245 Michael C. Ferguson Achievement Awards Scholarship attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 245 Michael C. Ferguson Achievement Awards Scholarship hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of 14 **DE Admin. Code** 245 Michael C. Ferguson Achievement Awards Scholarship amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 245 Michael C. Ferguson Achievement Awards Scholarship in the *Administrative Code of Regulations* for the Department of Education.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on November 20, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 20<sup>th</sup> day of November 2008.

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

\*Please note that no changes were made to the regulation as originally proposed and published in the October 2008 issue of the *Register* at page 398 (12 DE Reg. 398). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[245 Michael C. Ferguson Achievement Awards Scholarship](#)

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)  
(14 **Del.C.** §122(b) and §154(e))  
14 **DE Admin. Code** 612

**REGULATORY IMPLEMENTING ORDER****612 Possession, Use or Distribution of Drugs and Alcohol****I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol to clarify that charter schools are subject to this regulation and to require districts and charter schools to provide a copy of the policy electronically.

Notice of the proposed regulation was published in the News Journal and the *Delaware State News* on Thursday, October 2, 2008, in the form hereto attached as *Exhibit "A"*. The Department received comments from the Governor's Advisory Council for Exceptional Citizens indicating that they did not have any concerns with the amendments. However they did volunteer observations on Section 3.1.1, which was not considered for amendment at this time. The State Board of Education also requested that any revisions to the district or charter school policy be provided to the Department within in thirty (30) days rather than ninety (90) days.

## II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol in order to clarify that charter schools are subject to this regulation and to require districts and charter schools to provide a copy of the policy electronically.

## III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. Text and Citation

The text of 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 612 Possession, Use or Distribution of Drugs and Alcohol in the *Administrative Code of Regulations* for the Department of Education.

## V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on November 20, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 20<sup>th</sup> day of November 2008.

### DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 20<sup>th</sup> day of November 2008

### STATE BOARD OF EDUCATION

Jean W. Allen, President  
G. Patrick Heffernan  
Barbara Rutt  
Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President  
Jorge L. Melendez  
Dennis J. Savage

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**612 Possession, Use or Distribution of Drugs and Alcohol****1.0 The Following Policy on the Possession, Use, or Distribution of Drugs and Alcohol Shall Apply to All Public School Districts and Charter Schools**

- 1.1 The possession, use and/or distribution of alcohol, a drug, a drug like substance, a look alike substance and drug paraphernalia are wrong and harmful to students and are prohibited within the school environment.
- 1.2 Student lockers are the property of the school and may be subjected to search at any time with or without reasonable suspicion.
- 1.3 Student motor vehicle use to and in the school environment is a privilege which may be extended by school districts or charter schools to students in exchange for their cooperation in the maintenance of a safe school atmosphere. Reasonable suspicion of a student's use, possession or distribution of alcohol, a drug, a drug like substance, a look alike substance or drug paraphernalia in the school environment, may result in the student being asked to open an automobile in the school environment to permit school authorities to look for such items. Failure to open any part of the motor vehicle on the request of school authorities may result in the police being called to conduct a search, and will result in loss of the privilege to bring the vehicle on campus.
- 1.4 All alcohol, drugs, drug like substances, look alike substances and drug paraphernalia found in a student's possession shall be turned over to the principal or designee, and be made available, in the case of a medical emergency, for identification. All substances shall be sealed and documented, and, in the case of substances covered by 16 **Del.C.** Ch. 47, turned over to police as potential evidence.

**2.0 The Following Definitions Shall Apply to This Policy and Will be Used in All District and Charter School Policies**

"**Alcohol**" shall mean alcohol or any alcoholic liquor capable of being consumed by a human being, as defined in 4 **Del.C.** §101 including alcohol, spirits, wine and beer.

"**Distribute**" "**Distributing**" or "**Distribution**" shall mean the transfer or attempted transfer of alcohol, a drug, a look alike substance, a drug like substance, or drug paraphernalia to any other person with or without the exchange of money or other valuable consideration.

"**Drug**" shall mean any controlled substance or counterfeit substance as defined in 16 **Del.C.** §4701 including, for example, narcotic drugs such as heroin or cocaine, amphetamines, anabolic steroids, and marijuana, and shall include any prescription substance which has been given to or prescribed for a person other than the student in whose possession it is found.

"**Drug Like Substance**" shall mean any noncontrolled and nonprescription substance capable of producing a change in behavior or altering a state of mind or feeling, including, for example, some over the counter cough medicines, certain types of glue, caffeine pills and diet pills. The definition of drug like substance does not include tobacco or tobacco products which are governed by ~~regulation~~ 14 DE Admin. Code 877 Tobacco Policy.

"**Drug Paraphernalia**" shall mean all equipment, products and materials as defined in 16 **Del.C.** §4701 including, for example, roach clips, miniature cocaine spoons and containers for packaging drugs.

"**Expulsion**" shall mean exclusion from school for a period determined by the local district or charter school not to exceed the total number of student days. The process for readmission shall be determined by the local district or charter school.

"**Look Alike Substance**" shall mean any noncontrolled substance which is packaged so as to appear to be, or about which a student makes an express or implied representation that the substance is, a drug or a noncontrolled substance capable of producing a change in behavior or altering a state of mind or feeling. See 16 **Del.C.** §4752A.

"**Nonprescription Medication**" shall mean any over the counter medication; some of these medications may be a "drug like substance."

**"Possess" "Possessing" or "Possession"** shall mean that a student has on the student's person, in the student's belongings, or under the student's reasonable control by placement of and knowledge of the whereabouts of, alcohol, a drug, a look alike substance, a drug like substance or drug paraphernalia.

**"Prescription Drugs"** shall mean any substance obtained directly from or pursuant to a valid prescription or order of a practitioner, as defined in 16 Del.C. §4701(24), while acting in the course of his or her professional practice, and which is specifically intended for the student in whose possession it is found.

**"School Environment"** shall mean within or on school property, and at school sanctioned or supervised activities, including, for example, on school grounds, on school buses, at functions held on school grounds, at extra curricular activities held on and off school grounds, on field trips and at functions held at the school in the evening.

**"Use"** shall mean that a student is reasonably known to have ingested, smoked or otherwise assimilated alcohol, a drug or a drug like substance, or is reasonably found to be under the influence of such a substance.

**3.0 Each School District and Charter School Shall Have a Policy on File and Update it Periodically. The Policy Shall Include, as a Minimum the Following**

- 3.1 A system of notification of each student and of his/her parent, guardian or Relative Caregiver at the beginning of the school year, of the state and district policies and regulations. In addition a system for the notification of each student and his/her parent, guardian or Relative Caregiver whenever a student enrolls or re enrolls during the school year of the state and district policies and regulations.
- 3.2 A statement that state and district or charter school policies shall apply to all students, except that with respect to children with disabilities, applicable federal and state laws will be followed.
- 3.3 A written policy which sets out procedures for reporting incidents to police authorities, parents, guardians or Relative Caregivers and to the Department of Education, while maintaining confidentiality.
- 3.4 A written policy on how evidence is to be kept, stored and documented, so that the chain of custody is clearly established prior to giving such evidence over to the police.
- 3.5 A written policy on search and seizure.
- 3.6 A program of assistance for students with counseling and referral to services as needed.
- 3.7 A discipline policy which contains, at a minimum, the following penalties for infractions of state ~~and~~, district, and charter school drug policies.
  - 3.7.1 Use/Impairment: For a first offense, if a student is found to be only impaired and not in violation of any other policies, he/she shall be suspended for up to 10 days, or placed in an alternative setting for up to 10 days, depending upon the degree of impairment, the nature of the substance used, and other aggravating or mitigating factors. For a second or subsequent offense, a student may be expelled or placed in an alternative setting for the rest of the school year.
  - 3.7.2 Possession of alcohol, a drug, a drug like substance, and/or a look alike substance, in an amount typical for personal use, and drug paraphernalia: For a first offense, the student shall be suspended for 5 to 10 days. For a second or subsequent offense, a student may be expelled for the rest of the school year or placed in an alternative setting for the rest of the school year.
  - 3.7.3 Possession of a quantity of alcohol, a drug, a drug like substance, a look alike substance and drug paraphernalia in an amount which exceeds an amount typical for personal use, or distribution of the above named substances or paraphernalia: the student shall be suspended for 10 days, or placed in an alternative setting for 10 days. Depending on the nature of the substance, the quantity of the substance and/or other aggravating or mitigating factors, the student also may be expelled.
- 3.8 A policy in cases involving a drug like substance or a look alike substance for establishing that the student intended to use, possess or distribute the substance as a drug.

- 3.9 A policy which establishes how prescription and nonprescription drugs shall be handled in the school environment and when they will be considered unauthorized and subject to these state and local policies.
- 3.10 A policy which sets out the conditions for return after expulsion for alcohol or drug infractions.
- 3.11 Notwithstanding any of the foregoing to the contrary, all policies adopted by public school districts or charter schools relating to the possession or use of drugs shall permit a student's discretionary use and possession of an asthmatic quick relief inhaler ("Inhaler") or autoinjectable epinephrine with individual prescription label; provided, nevertheless, that the student uses the inhaler or autoinjectable epinephrine pursuant to prescription or written direction from a state licensed health care practitioner; a copy of which shall be provided to the school district or charter school; and further provided that the parent(s) or legal custodian(s) of such student provide the school district or charter school with written authorization for the student to possess and use the inhaler or autoinjectable epinephrine at such student's discretion, together with a form of release satisfactory to the school district or charter school releasing the school district or charter school and its employees from any and all liability resulting or arising from the student's discretionary use and possession of the inhaler or autoinjectable epinephrine and further provided that the school nurse may impose reasonable limitations or restrictions upon the student's use and possession of the inhaler or autoinjectable epinephrine based upon the student's age, level of maturity, behavior, or other relevant considerations.
- (For students who use prescribed asthmatic quick relief inhalers or autoinjectable epinephrine, see 14 **DE Admin. Code** 817, Administration of Medications and Treatments)

**4.0 Reporting Requirements and Timelines**

- 4.1 Each local school district and charter school shall have an electronic copy of its current possession, use and distribution of drugs and alcohol policy on file with the Department of Education.
- 4.2 When a local school district or charter school revises its possession, use, and distribution of drugs and alcohol policy, it shall provide an electronic copy of the revised policy to the Department within ~~ninety (90)~~ thirty (30) days of the revision, even if the revision was made because of changes in Federal, state or local law, regulations, guidance or policies.

2 DE Reg. 2043 (5/1/99)

7 DE Reg. 767 (12/1/03)

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**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Sections 1205(b) (14 **Del.C.** §1205(b))  
14 **DE Admin. Code** 1572

**REGULATORY IMPLEMENTING ORDER****1572 Teachers of Students Who Are Gifted and Talented****Summary of the Evidence and Information Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1572 Teachers of Students Who are Gifted And Talented. It was necessary to amend this regulation as part of the 5 year review cycle of certification regulations adopted by the Professional Standards Board and in order to conform to the recent Standard Certificate regulation language clarity and consistency shift. This regulation sets forth the requirements for a teacher of gifted and talented students.

Notice of the proposed amendment of the regulation was published in the News Journal and the *Delaware State News* on October 1, 2008 in the form hereto attached as Exhibit "A". The notice invited written comments. Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities that solely addressed grammar and formatting. The suggested changes have been taken into consideration and the regulation has been subsequently amended.

## Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

## Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1572 of the *Administrative Code of Regulations* of the Department of Education.

## V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 6<sup>TH</sup> DAY OF NOVEMBER, 2008

Kathleen Thomas, Chair  
 Joanne Christian  
 Samtra Devard  
 Cathy Zimmerman  
 Lori Hudson  
 Jill Lewandowski  
 Gretchen Pikus  
 Michael Thomas

Cristy Greaves  
 Marilyn Dollard  
 Karen Gordon  
 David Kohan  
 Whitney Price  
 Wendy Murray  
 Karen Schilling-Ross  
 Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

**IT IS SO ORDERED** THIS 20TH DAY OF NOVEMBER, 2008

## STATE BOARD OF EDUCATION

Jean W. Allen, President  
 G. Patrick Heffernan

Richard M. Farmer, Jr., Vice President  
 Jorge L. Melendez

Barbara Rutt  
Dr. Terry M. Whittaker

Dennis J. Savage

## 1572 Teacher of Students Who Are Gifted and Talented

### 4.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 ~~Del.C.~~ §1220(a), for a Teacher of Gifted and Talented Students in programs that are identified as specific to students who have been identified as gifted and talented through assessments and other criteria set forth by local school districts.

### 2.0 Definitions

2.1 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

**"Department"** means the Delaware Department of Education.

**"License"** means a credential which authorizes the holder to engage in the practice for which the license is issued.

**"Standard Certificate"** means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.

### 3.0 Standard Certificate

In accordance with 14 ~~Del.C.~~ §1220(a), the Department shall issue a Standard Certificate as a Teacher of Gifted and Talented Students to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 Bachelor's degree in education or a content area from a regionally accredited college/university; and,

3.2 A minimum of three years of teaching experience at any PK to 12 level; and,

3.3 Completion of course work in each of the following areas:

3.2.1 Foundations of giftedness, including cultural and socioeconomic equity;

3.2.2 Curriculum design and instructional strategies for gifted students;

3.2.3 Psychology of gifted students; and

3.2.4 Creative and critical thinking skills.

### 1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Teacher of Students Who Are Gifted and Talented. This certification is required in programs that are identified as specific to students who have been identified as gifted and talented through assessments and other criteria set forth by local school districts.

1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

### 2.0 Definitions

2.1 The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

### 3.0 Standard Certificate

# FINAL REGULATIONS

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Teacher of Students Who Are Gifted and Talented to an educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
  - 3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and,
  - 3.1.3 Has satisfied the additional requirements in this regulation.

## 4.0 Additional Requirements

- 4.1 If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following:
- 4.[1].2 If the educator is applying for [their a] first Standard [eC]ertificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5.1 the required 15 credits or their equivalent in professional development required in 14 DE Admin. Code [1505 Standard Certificate] 3.1.5.1 that must be satisfactorily completed for this standard certificate must at a minimum include the following areas:
    - 4.[1].2.1 Foundations of Giftedness, including Cultural and Socioeconomic Equity (3 credits);
    - 4.[1].2.2 Curriculum Design and Instructional Strategies for Gifted Students (3 credits)[:];
    - 4.[1].2.3 Psychology of Gifted Students (3 credits); and
    - 4.[1].2.4 Creative and Critical Thinking Skills (3 credits).
  - 4.[1].3 If the educator is applying for [their a] second [eS]tandard Certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5, the satisfactory completion of fifteen (15) credits or their equivalent in professional development in the areas of[:]:
    - 4.3.1 Foundations of Giftedness, including Cultural and Socioeconomic Equity (3 credits);
    - 4.3.2 Curriculum Design and Instructional Strategies for Gifted Students (3 credits);
    - 4.3.3 Psychology of Gifted Students (3 credits); and
    - 4.3.4 Creative and Critical Thinking Skills (3 credits).

7 DE Reg. 779 (12/01/03)

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. § 512)

### ORDER

Title XIX Medicaid State Plan Attachment 2.2 Page 18, Supplement 6 to Attachment 2.6-A and Division of Social Services Manual (DSSM) 17800 - 17805

### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding the Medical Assistance during Transition to the Medicare Program. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the September 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from

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the public concerning the proposed regulations to be produced by September 30, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

## SUMMARY OF PROPOSED AMENDMENT

The purpose of this proposal is to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) related to the Medical Assistance during Transition to the Medicare Program. The reason for this amendment is to add coverage for a new optional categorically needy Medicaid population group.

### Statutory Authority

- 42 CFR §435.232, *Individuals Receiving Only Optional State Supplements*

### Background

The SSI Medical Assistance Transition (MAT) Program was implemented on March 1, 2001. This program was specifically designed to provide Medicaid coverage to SSI beneficiaries who lost SSI benefits (and consequently Medicaid eligibility) due to the receipt of Social Security Disability Income (SSDI) benefits. This extension of Medicaid coverage was made possible by establishing an Optional State Supplement program, which satisfies federal requirements for Medicaid Federal Financial Participation (FFP). The Title XIX Medicaid State Plan defines this group as "*Individuals who lose SSI due to receipt of Social Security Disability Income and are not yet eligible for Medicare.*"

### Summary of Proposed Amendment

The Medicaid State Plan and the Division of Social Services Manual (DSSM) will be amended to provide coverage to those individuals, not previously receiving SSI, who may be eligible for Medicaid based solely on income and who lose eligibility due to the receipt of Social Security Disability Income (SSDI), which exceed Medicaid eligibility guidelines. Effective September 1, 2008, eligibility would be for any individual who lost eligibility for Medicaid on or after January 1, 2008 due to the receipt of SSDI and does not have Medicare coverage.

The provisions of this amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

## SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DMMA has considered each comment and responds as follows:

First, the proposed amendments broaden eligibility for this program. Literally, it will be available to individuals who lose Medicaid eligibility due to receipt of SSDI even if the basis for Medicaid eligibility is not SSI. See Section 17801 and chart on top of p. 287. The Councils endorse this change.

**Agency Response:** Thank you for the endorsement.

Second, there is a "typo" at Par (9) on p. 286. The reference to "Medical" should be to "Medicare".

**Agency Response:** This was a publication error. The agency's original submission to the publisher shows "Medicare".

Third, the standards are inconsistent in one respect. The State Plan [Par (9) on p. 286 and chart at top of p. 287] extends eligibility only to persons "not yet eligible for Medicare". In contrast, Section 17801 extends eligibility to anyone who "does not have Medicare coverage". The latter standard is broader since SSDI beneficiaries can opt to not enroll in Medicare. The latter standard would allow an SSDI beneficiary eligible for Medicare to continue Medicaid eligibility indefinitely by not enrolling in Medicare. If the "Medicare coverage" standard is retained, DMMA

may wish to clarify whether it refers to Medicare A, B or D. For example, if an SSDI beneficiary enrolls in Medicare A and B, but not D, does the beneficiary "have Medicare coverage" within the scope of Section 17801?

**Agency Response:** Section 17801 will be revised. Medicaid eligibility is extended to individuals who are not yet eligible for Medicare.

Fourth, there is some "tension" among Sections 17802, 17804, and 17805. While all income is excluded for eligibility purposes under Section 17802; Sections 17804 and 17805 contain income and countable income criteria. It appears inconsistent to make income immaterial under one section while establishing income standards under other standards. The \$5.00 referenced in Section 17804 is actually a payment to the beneficiary but could be interpreted as a countable income cap. These sections would benefit from revisions for clarity.

**Agency Response:** Sections 17802, 17804, and 17805 are in compliance with 42 CFR §435.234 and will not be revised.

#### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2008 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding the Medical Assistance during Transition to the Medicare Program is adopted and shall be final effective December 10, 2008.

Vincent P. Meconi, Secretary, DHSS, November 17, 2008

#### DMMA FINAL ORDER REGULATION #08-46a

#### REVISIONS:

Revision: HCFA-PM-91-4 (BPD)

ATTACHMENT 2.2-A

Page 18

OMB NO.:0938

State: DELAWARE

Agency*	Citation(s)	Groups Covered
	C.	Optional Groups Other Than the Medically Needy (Continued)
	_____ (4)	Aged individuals in domiciliary facilities or other group living arrangements as defined under SSI.
	_____ (5)	Blind individuals in domiciliary facilities or other group living arrangements as defined under SSI.
	_____ (6)	Disabled individuals in domiciliary facilities or other group living

arrangements as defined under SSI.

\_\_\_\_\_(7) Individuals receiving federally administered optional State supplement that meets the conditions specified in 42 CFR 435.230.

\_\_\_\_\_(8) Individuals receiving a State administered optional State supplement that meets the conditions specified in 42 CFR 435.230.

X (9) Individuals in additional classifications approved by the Secretary as follows:

~~Individual who lose SSI due to receipt of Social Security Disability and are not yet eligible for Medicare.~~

Individuals who lose eligibility for Medicaid due to the receipt of Social Security Disability Insurance and are not yet eligible for Medicare.

***(Break In Continuity of Sections)***

Revision:

HCFA-AT-85-3  
FEBRUARY 1985

SUPPLEMENT 6 TO  
ATTACHMENT 2.6-A

State: DELAWARE

Standards for Optional State Supplementary Payments

PAYMENT CATEGORY  (REASONABLE CLASSIFICATION)	FEDERAL	STATE	INCOME		LEVELS		INCOME DISREGARDS EMPLOYED
			GROSS 1 Person	Couple	NET 1 Person	Couple	
(1)  Individuals Residing in Adult Foster Care Homes	(2)  X		(3)  SSI + \$140 + \$20		(4)  SSI + \$140		(5)  Disregards According to the SSI Program

Individuals Who Lose <del>SSI Eligibility for Medicaid</del> Due to Receipt of Social Security Disability Insurance and Are Not Yet Eligible for Medicare		X	\$5.00		\$5.00		All Income is Excluded
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## DMMA FINAL ORDER REGULATION #08-46b

### REVISIONS:

#### 17800 Medical Assistance during Transition to Medicare

Under 42 CFR 435.232 Medicaid may be provided to individuals who receive only an optional State supplement and who would be eligible for SSI except for the level of their income.

The rules in this section set forth the eligibility requirements for coverage under this state-administered Optional State Supplementation group - Medical Assistance during Transition to Medicare (MAT). The MAT group is implemented ~~with the earliest effective date of February 1, 2001~~ March 1, 2001. Eligibility under this group is not retroactive.

#### 17801 Status Eligibility

In addition to the general Medicaid eligibility requirements listed in DSSM 14000 - ~~14950.7~~ 14960, the individual ~~meets all the conditions listed below~~ must meet the following conditions:

- a) received SSI, and
- b) ~~lost eligibility for SSI because of Social Security Disability, and lost eligibility for SSI due to the receipt of Social Security Disability Insurance, and~~
- c) **[does not have Medicare coverage, and is not yet eligible for Medicare.]**
- d) ~~is not an inmate in a public institution. An individual is an inmate when serving time for a criminal offense or confined involuntarily in State or Federal prisons, jail, detention facilities, or other penal facilities. An individual awaiting trial in a detention center is considered an inmate of a public institution~~
- e) ~~an annual redetermination is completed. A redetermination is a re-evaluation of a recipient's continued eligibility for medical assistance. In a redetermination, all eligibility factors are re-examined to ensure that the recipient continues to meet categorical eligibility requirements. When a redetermination is due, the recipient is required to complete and return a new DSS application form. A redetermination is complete when all eligibility factors are examined and a decision regarding continued eligibility is reached.~~

Effective September 1, 2008, coverage under the MAT group is extended to an individual who:

- a) lost eligibility for Medicaid on or after January 1, 2008, due to the receipt of Social Security Disability Insurance, and
- b) **[does not have Medicare coverage is not yet eligible for Medicare.]**

#### 17802 Financial Eligibility

All income and resources are excluded.

#### 17803 Eligibility Determination

~~DSS will receive the names of individuals who lose SSI via the monthly State Data Exchange (SDX). When an individual loses Medicaid eligibility because of the loss of SSI, Federal regulations require a redetermination of~~

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Medicaid eligibility based upon information obtained through the SDX file. A new application is not required. The SSI Unit will use the information obtained from the SDX to redetermine Medicaid eligibility.

When an individual loses Medicaid eligibility, a redetermination will be completed to the extent possible based on information contained in the individual's file. An application form may be required if additional or updated information is needed for the redetermination.

## 17804 Income Standard

The income standard is \$5.00.

## 17805 Payment Level

Countable income is deducted from the income standard.

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## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)793

### ORDER

#### TANF Employment & Training Program, Division of Social Services Manual (DSSM) 3006.1

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Temporary Assistance for Needy Families (TANF) Employment & Training Program regarding mandatory participants. The Department's proceedings were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of public comment pursuant to 29 **Delaware Code** Section 10115 in the September 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSAL

The purpose of this regulatory action is to amend the Division of Social Services Manual (DSSM) regarding mandatory participants in the Temporary Assistance for Needy Families (TANF) Employment & Training Program.

#### Statutory Authority

- 45 CFR §261.2(n)(2)(i), *Work-eligible individual*
- 45 CFR §261.22(c)(1), *How will we determine a State's overall work rate?*

#### Background

Reference is made to the final rule reauthorizing the TANF Program at 73 FR 6821 (Federal Register, Volume 73, Page 6821, and dated February 5, 2008). This final rule implements changes to the Temporary Assistance for Needy Families (TANF) program required by the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109-171). The DRA reauthorized the TANF program through Fiscal Year (FY) 2010.

The DRA required States to implement certain work requirements effective October 1, 2006. The DRA included provisions to ensure consistent measurement of work participation rates, including defining work activities,

determining the circumstances under which a parent who resides with a child who is a recipient of assistance should be required to participate in work activities. It also required States to establish and maintain work participation verification procedures. The effective date of the final rule is October 1, 2008.

### Summary of Proposed Changes

**DSSM 3006.1, Mandatory Participants:** The rule defines a parent needed to remain home to care for a family member with a disability as not “work-eligible” if there is medical documentation to support the need for the parent to remain in the home to provide that care. The text is also reformatted to increase clarity.

### SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Governor’s Advisory Council for Exceptional Citizens (GACEC), the State Council for Persons with Disabilities (SCPD), Delaware Community Legal Aid Society, Inc. (DECLASI) and the Delaware Coalition Against Domestic Violence (DCADV) offered the following observations and recommendations summarized below. DSS has considered each comment and responds as follows.

#### GACEC & SCPD

The Councils note that there are three (3) important federal provisions applicable to persons with disabilities.

First, the federal regulations [attached 73 Fed Reg. at 6775] stress that persons with disabilities exempt from employment and training requirements can still voluntarily opt to take advantage of vocational programs. Under such circumstances, the State must provide reasonable accommodations. Id. In the related context of parents caring for a child with a disability, the State is also obligated to assist with provision of child care if the parent wishes to work:

We would like to stress that this exclusion for a parent caring for a disabled family member does not absolve the State of its responsibility to help TANF recipients find appropriate child care, including care for children with disabilities....A State may not exclude a child who has a disability from available child care, if doing so would prevent the parent from gaining needed skills, finding work, and moving the family out of dependency.

73 Fed. Reg. at 6801 (attached). DSS implements this federal mandate through the last two sentences in proposed Section 3006.1:

Individuals who are exempt from Employment and Training requirements can volunteer to participate in the Employment and Training Program. Individuals with disabilities will be afforded the same access and opportunities, including reasonable accommodations, to participate in the Employment and Training programs.

We recommend the following amendments:

Individuals who are exempt from Employment and Training requirements can volunteer to participate in the Employment and Training Program. Individuals with disabilities will be afforded the same access, *supports* and opportunities, including reasonable accommodations, to *ensure effective participation* ~~participate~~ in the Employment and Training programs.

The amendments would cover supports such as child care for children with disabilities and conform more closely to regulatory commentary compiled at 73 Fed. Reg. at 6775.

**Agency Response:** DSS appreciates the comments submitted and will add the suggested *supports* text.

Second, the federal regulation provides states with the option of exempting both SSI and SSDI beneficiaries from mandatory participation in Employment and Training related activities. See attached 73 Fed Reg at 6798 and

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6822. This is based on recognition that the SSA has determined that such individuals are incapable of engaging in substantial gainful activity. DSS may wish to consider incorporating the exemption in its regulation.

**Agency Response:** DSS currently exempts those individuals who are unable to work under revised DSSM 3006.1, as follows: 2) *a) An individual determined unemployable by a health care professional.*

Third, consistent with attached 45 C.F.R. 261.2(n), HHS exempts “a parent providing care for a disabled family member living in the home, provided there is medical documentation to support the need for the parent to remain in the home to care for the disabled family member.” Background is provided in the attached 73 Fed. Reg. at 6796 and 6800-6801. DSS implements this provision through proposed Section 3006.1 which appears to conform to the federal regulation.

**Agency Response:** DSS appreciates the comment.

### **CLASI and DCADV**

While we generally agree that the proposed changes clarify and restate DSS policy in regard to the TANF program in Delaware, we believe a few changes and clarifications would make the proposed changes to DSSM 3006 consistent with other regulations applicable to this program.

First, the proposed regulation provides for an exemption for a single parent caring for a child under 12 months of age. We have two concerns. First, why only single parents? Shouldn't this exemption apply to one parent in a two parent household rather than neither? If the distinction is made to comply with the Deficit Reduction Act work participation rate, the State should fund these families with MOE funds. That way, one parent can be home with the child under 12 months while the other is subject to the required Employment and Training related activities. This change would provide all children whose parent receives TANF assistance in Delaware to have one parent home with them during the first year, rather than just those children whose caregiver is a single parent.

**Agency Response:** This exemption was adopted by DSS on October 1, 2006. The proposed change is to clarify that policy. This is what is allowable under 45 CFR §261.22 (c)(1), *A State has the option of not requiring a single custodial parent caring for a child under age one to engage in work.*

Please note that under DSSM 3006.2, two parent families who do not receive federally funded child care assistance must only participate and combined total of 35 hours in TANF Employment and Training activities. These hours can be accomplished by one parent and would enable the other parent to stay in the home to care for the children as described in your above recommendation. Additionally, this option would enable the parent to stay in the home longer than twelve months.

The second concern with the proposed DSSM 3006.1(1) is the lifetime limit of 12 months. This lifetime limit should explicitly provide for a good cause exception, as defined in DSSM 3001(1), “[t]he adult recipient has ‘good cause’ when either a circumstance or condition exists in either her/his personal or family situation beyond which she/he has no control, and which would prevent cooperation and/or participation.”

**Agency Response:** The policy is limited to those guidelines stated in 45 CFR §261.22 (c)(2) *At State option, we will disregard a family with such a parent from the participation rate calculation for a maximum of 12 months.*

A third concern is the use of the term “parent” in proposed DSSM 3006.1(4). DSSM 3004, uses “caretaker relative” and defines the term as follows:

- Any relative by blood, marriage, or adoption who is within the fifth degree of kinship to the dependent child. The degree of relationship is as follows: a parent (1st degree), grandparent (2nd degree), sibling (2nd degree), great-grandparent (3rd degree), uncle or aunt (3rd degree), nephew or niece (3rd degree), great-great-grandparent (4th degree), great-uncle or aunt (4th degree), first cousin (4th degree), great-great-great-grandparent (5th degree), great-great uncle or aunt (5th degree), or a first cousin once removed (5th degree).
- Any other persons named in the above groups whose relationship to one of the child's parents is established by legal adoption;
- The spouse of any person named in the above groups even though the marriage terminated by death or divorce.

Thus, the use of the term "relative caretaker" would be consistent with other, related, regulations and would apply to any caretaker of a disabled family member rather than just a parent. It is not unusual for a non parent to care for a disabled family member (especially if the caretaker is an adult child caring for their parent) and there is no reason for non parents to be treated differently than parents. It is cheaper for the State to allow a non parent to receive assistance to care for a disabled family member than to require the disabled person to attend a program or stay in a care facility so the potential caretaker can comply with Employment and Training requirements.

**Agency Response:** 73 Fed Reg. 6800 (February 5, 2008) specifically addresses the question of allowing non-parental relatives such as aunts, uncles and grandparents to use this exemption. As stated, under the regulation "...a non-parental relative who receives assistance must be work eligible". For this reason DSS has limited this exemption to parents.

Finally, proposed DSSM 3006.1(3) would be more clear if rather than simply stating that some victims of Domestic Violence are exempted, it referenced DSSM 3010.2 which provides a definition and creates the full exemption from participation in the Contract of Mutual Responsibility.

**Agency Response:** DSS will add text to the proposed policy which references DSSM 3010.2.1 through DSSM 3010.2.5.

#### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2008 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the TANF Employment and Training Program regarding mandatory participants is adopted and shall be final effective November 10, 2008.

Vincent P. Meconi, Secretary, DHSS, November 14, 2008

#### DSS FINAL ORDER REGULATION #08-47

#### REVISIONS:

#### 3006 TANF Employment and Training Program

Delaware's Temporary Assistance ~~To~~ for Needy Families (TANF) welfare reform effort is based on the idea that TANF is a transitional benefit and should not become a way of life. The Division maintains that the way for persons to avoid TANF dependency is for them to find and maintain employment.

#### 3006.1 Mandatory Participants

793

(45 CFR §261.2 (n)(2)(i))

All adult caretakers and other adults in the assistance unit who are not exempt must participate in Employment and Training related activities. The ~~two~~ four possible exemptions are:

- [4 A] a A single [custodial] parent caring for a child under 12 months of age. ~~or~~ This exemption has a lifetime limit of 12 months.
- [2 B] ~~a~~An individual determined unemployable by a health care professional.
- [3 C] On a case-by-case basis, clients who are victims of Domestic Violence. [see DSSM 3010.2.1 through DSSM 3010.2.5]
- [4 D] A parent caring for a disabled family member\* who lives in the home.

\* A parent or spouse can be excluded to care for a **child** or a **spouse** as long as the following conditions apply:

1. The parent is biological, adoptive or step.
2. The parent or spouse lives in the home with the child.
3. The need for such care is supported by medical documentation.
4. The spouse of a parent can use the caring for exemption even though the marriage is terminated by death or divorce.

Children age 16 or older who are not attending school must participate in work or other alternative activities, e.g., GED.

Individuals who are exempt from Employment and Training requirements can volunteer to participate in the Employment and Training Program. Individuals with disabilities will be afforded the same access[, **supports**] and opportunities, including reasonable accommodations, to participate in the Employment and Training programs.

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**DEPARTMENT OF LABOR**  
**DIVISION OF INDUSTRIAL AFFAIRS**  
**1310 The Office of Anti-Discrimination**  
Statutory Authority: 19 Delaware Code, Sections 712(a)(2) and 728  
(19 Del.C. §712(a)(2) & §728)

**ORDER**

A public meeting was held on September 24, 2008 to receive public comments relating to the proposed Delaware Department of Labor Office of Anti-Discrimination's Rules and Regulations (collectively the "Rules and Regulations") for adoption by the Delaware Department of Labor. The Director of Industrial Affairs and the Administrator of the Office of Anti-Discrimination (collectively the "Department") will present their recommendations to the Secretary of Labor to adopt these proposed Rules and Regulations as they were published in the *Register of Regulations*, Vol. 12, Issue 2 (August 1, 2008).

**Summary of the Evidence and Information Submitted**

Exhibits Admitted:

- Exhibit 1 – News Journal Affidavit of publication of notice of public hearing.
- Exhibit 2 – Delaware State News Affidavit of publication of notice of public hearing.
- Exhibit 3 – Written comments from State Council for Persons With Disabilities.
- Exhibit 4 – Written Comments from Delaware Developmental Disabilities Council.
- Exhibit 5 – Written comments from the Labor & Employment Section of the Delaware State Bar Association.

The Department opened the floor to public comments. Sarah E. DiLuzio, Esquire spoke on behalf of the Labor & Employment Section of the Delaware State Bar Association (the "DSBA"). Ms. DiLuzio vocalized the DSBA's written comments. In particular, with regard to section 2 (Commencement of Actions) of the proposed Rules and Regulations, the DSBA felt that a more complete statement of the charge of discrimination would better serve the interests of the employer. She further stated that she has received charges without sufficient factual detail in her practice. Additionally, with regard to section 3 (Answers) of the proposed Rules and Regulations, the DSBA felt that the Department's current practice of liberally granting extension requests should become a requirement. The

DSBA also asked for specific protections for proprietary information. Finally, in section 6 (Investigations) of the proposed Rules and Regulations, the DSBA requested that respondent's counsel be notified before the Department conducted an on-site visit, interview, or deposition of respondent's employees.

G. Kevin Fasic, Esquire spoke on behalf of the Delaware State Chamber of Commerce (the "Chamber"). Mr. Fasic stated that the Chamber endorsed the comments offered by the DSBA, and recommended their adoption. Both Ms. DiLuzio and Mr. Fasic stated that the DSBA's comments resulted from a "spirited" discussion between members of the plaintiff and defense bars.

The law firm of Young Conaway Stargatt & Taylor LLP submitted written comments electronically while the public meeting was underway. Because these comments were not received before 2:00 p.m. on September 24, 2008, the time noticed for the public meeting, and because these comments were not presented during the public meeting, the comments were not entered into evidence at the meeting. Even though these comments were not made exhibits to this Order, the Director and Administrator decided to review Young Conaway Stargatt & Taylor LLP's submission for non-substantive content.

The Director and Administrator considered the public concerns raised and reviewed their applicability to the proposed Rules and Regulations. The Director and Administrator decided to adopt some non-substantive modifications proposed by Young Conaway Stargatt & Taylor LLP, and to recommend approval of the proposed Rules and Regulations as modified.

#### **Recommended Findings of Fact With respect to the Evidence and Information**

The Department is persuaded that the proposed Rules and Regulations are consistent with efficient administration of the statutory directives in the Discrimination in Employment Act.

#### **Recommendation**

The proposed Rules and Regulations are respectfully submitted to the Secretary of Labor for consideration with a recommendation for adoption this 29th day of October, 2008.

#### **DEPARTMENT**

James G. Cagle, Jr.,  
Director, Industrial Affairs

Julie Klein Cutler  
Administrator, Office of Anti-Discrimination

#### **Decision and Effective Date**

Having reviewed and considered the record and recommendations of the Department, the proposed Rules and Regulations are hereby adopted and made effective January 1, 2009.

#### **Text and Citation**

The Rules and Regulations appeared in the *Register of Regulations*, Vol. 12, Issue 2 (August 1, 2008). The Rules and Regulations are available from the Department of Labor, Division of Industrial Affairs, Office of Anti-Discrimination.

#### **DEPARTMENT OF LABOR**

Thomas B. Sharp, Secretary of Labor

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## 1311 Office of Anti-Discrimination Rules and Regulations

### **1.0 General Provisions**

#### 1.1 Purpose and scope.

1.1.1 The regulations set forth in this part contain the procedures established by the Department of Labor for carrying out its responsibilities in the administration and enforcement of 19 Del.C. Ch 7, Subchapters II-III.

#### 1.2 Address; office hours.

1.2.1 Questions may be addressed to "Anti-Discrimination Office Administrator" at 4425 N. Market Street, Wilmington, Delaware 19802. The office is open daily from 8:00 a.m. to 4:30 p.m. except Saturdays, Sundays, and Legal Holidays.

#### 1.3 Definitions.

1.3.1 The terms ["Charging Party,[" "Conciliation,[" ["Delaware Right to Sue Notice,[" ["Mediation,[" ["No Cause Determination,[" ["Reasonable Cause Determination,[" and ["Respondent,[" when used in this regulation, shall have the meanings set forth in 19 Delaware Code, Section 710.

1.3.2 The following words and terms, when used in this regulation, [~~should~~ shall] have the following meaning[s]:

"Administrator" means the Office of Anti-Discrimination Administrator or his designee.

"Complainant" means any individual claiming to have been harmed by an unlawful employment practice under the Discrimination in Employment Act (19 Del.C. §711) or the Handicapped Persons Employment Protections Act (19 Del.C. §724).

"Day" means calendar day unless otherwise specified.

"Department" means the Department of Labor.

"Fact-finding conference" means a conference convened by the administrator as an investigative forum intended to define the issues, to determine which elements are undisputed, to resolve those issues that can be resolved and to ascertain whether there is a basis for negotiated settlement of the verified charge.

"Mediation Director" means the director of the Discrimination Mediation Unit or his designee.

"Party" means any complainant, charging party, respondent, or the Department of Labor.

"Verified charge" or "charge" means [the a] charge of discrimination [which that] sets forth a concise statement of facts, in writing, verified under oath and signed by the Charging Party.

#### 1.4 Attorneys; form of appearance on behalf of parties.

1.4.1 An attorney may appear on behalf of a party by providing written notice of appearance. To constitute an appearance, a form, letter, or document shall contain the names of the parties, the department's docket number if known, the name of the party [which that] the attorney represents, and the attorney's address, telephone number, facsimile number, and [email e-mail] address.

1.4.2 If a party appears through an attorney, all papers shall be served on the attorney with the same force and effect as though served on the client.

1.4.3 An attorney may withdraw his appearance by providing written notice of withdrawal to the department, certifying that a copy of the notice of withdrawal was mailed to all parties.

#### 1.5 Parties' obligation to keep department informed of change of address or status.

1.5.1 The parties shall promptly notify the department of any change in address, telephone number, contact information, or other material change in business status while the charge is pending.

#### 1.6 Liberal construction of regulations.

1.6.1 These regulations shall be liberally construed by the administrator to permit the department to discharge its statutory duties under 19 Del.C. Ch. 7, Subchapters II and III.

#### 1.7 Practice where regulations do not govern.

- 1.7.1 In any circumstance that arises not governed by these regulations, the administrator shall exercise his discretion in order to permit the department to discharge its statutory duties under 19 **Del.C.** Ch. 7, Subchapters II and III.
- 1.8 Validity of regulations if any portion declared invalid.
- 1.8.1 If any portion of these regulations is adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any portion loses its force and effect, the ruling or action will not affect, impair or void the remainder of these regulations.
- 1.9 Amendment of regulations.
- 1.9.1 The administrator may rescind, amend or expand these regulations from time to time as necessary to comply with the Discrimination in Employment Act, 19 **Del.C.** Ch 7, Subchapter II or the Handicapped Persons Employment Protection Act, 19 **Del.C.** Ch 7, Subchapter III, and such new regulations shall be submitted to the Registrar's office in accordance with the provisions of 29 **Del. C.** §10161(b).

## **2.0 Commencement of Actions**

- 2.1 Manner of commencing actions.
- 2.1.1 An action shall be commenced by the filing of a verified charge with the department's Office of Anti-Discrimination.
- 2.2 Who may file a verified charge.
- 2.2.1 A complainant may file a verified charge alleging a violation of the Discrimination in Employment Act or the Handicapped Persons Employment Protections Act.
- 2.3 Preparation and contents of verified charge.
- 2.3.1 A verified charge shall be filed on a printed form approved by the administrator.
- 2.3.2 The department shall assist the complainant in the completion of the verified charge where necessary.
- 2.3.3 The verified charge shall indicate that it is filed with the department, and shall set forth the following:
- 2.3.3.1 The complainant's full name, address, and telephone number;
- 2.3.3.2 The respondent's full name, address, and telephone number if known;
- 2.3.3.3 A brief statement of jurisdiction identifying the nature, date of, and location of the employment relationship;
- 2.3.3.4 The specific prohibited basis or bases that gave rise to the alleged violation;
- 2.3.3.5 The specific adverse employment action alleged to have occurred as a result of the alleged violation;
- 2.3.3.6 A brief statement **[setting forth of]** the facts deemed to constitute the alleged violation;
- 2.3.3.7 The specific law or laws allegedly violated;
- 2.3.3.8 A brief statement explaining why the complainant alleges a causal relationship between the prohibited basis and the adverse action; and
- 2.3.3.9 Notarized signature and verification by the complainant.
- 2.4 Filing a verified charge.
- 2.4.1 The filing of a verified charge is perfected upon completion of the following steps before an official of the Office of Anti-Discrimination:
- 2.4.1.1 Administration of an oath;
- 2.4.1.2 Execution of the verified charge; and
- 2.4.1.3 Notarization of the complainant's verified signature.
- 2.5 Notification of filing.
- 2.5.1 Upon **[the]** filing of a verified charge, the department shall provide the charging party with a form approved by the administrator which notifies the charging party of the jurisdictional limitations of the department, including the limitation of the department to only administer claims under the

Discrimination in Employment Act and the Handicapped Persons Employment Act, and the inability of the department to provide an attorney or conduct a hearing.

**2.6** Service of a charge.

**2.6.1** Within 14 days of **[the]** filing **[of]** a charge, the department shall cause a copy of the charge to be served on the respondent by certified mail, return receipt requested.

**2.6.2** In its discretion, the department may also cause to be served **[with the copy of the charge or a request for information,]** an invitation to participate in mediation, ~~**[or a request for information with the copy of the charge or both]**~~.

**2.6.3** At the time of service, the department shall provide the respondent with notice of the respondent's right to file an answer.

**2.6.4** **[Service The date of service]** on a respondent ~~**[is determined to shall]**~~ be the delivery date noted on the certified mail return receipt.

**2.7** Amendment of a charge.

**2.7.1** ~~**[Any At any]**~~ time before the department issues its final determination under 19 Del.C. §712(c)(3), the charging party, with the approval of the administrator, may file an amendment to the charge.

**2.7.2** Amendments that cure technical defects or clarify allegations made in the original charge, or **[that]** allege additional acts ~~**[which that]**~~ constitute unlawful practices related to or growing out of the allegations set forth in the original charge, will relate back to the date the charge was first filed.

**2.7.3** Within seven days of **[the]** filing **[of]** an amendment, the department shall cause a copy of the amendment to be served on the respondent by certified mail, return receipt requested. The department shall provide written notice to the respondent of the respondent's right to file an amended answer within 20 days of receipt **[of the amended charge]**.

**3.0** Answers

**3.1** Time for filing an answer.

**3.1.1** A respondent may file an answer to the charge within 20 days of receipt~~**[, certifying of the charge. The respondent shall certify]**~~ that a copy of the answer was mailed to the charging party or his attorney ~~**[where appropriate]**~~ at the address provided.

**3.1.2** ~~**[A Respondent respondent may]**~~, in lieu of filing an answer, ~~**[may]**~~ request mediation within 20 days of receipt~~**[, certifying of the charge. The respondent shall certify]**~~ that a copy of the request for mediation was mailed to the charging party or his attorney ~~**[where appropriate]**~~ at the address provided.

**3.1.3** A request for **[an]** extension of time **[to file an answer or request for mediation]** shall be in writing and addressed to the administrator. The administrator within his discretion may authorize an extension.

**3.2** Form and content of answer.

**3.2.1** The answer to the charge shall fully and completely advise the charging party and the department ~~**[as to the nature]**~~ of the respondent's ~~**[defenses responses]**~~ to each claim asserted, and shall specifically admit or deny the allegations set forth in each paragraph of the charge. A respondent may admit in part and deny in part.

**3.2.2** ~~**[An affirmative defense to an allegation Affirmative defenses]**~~ shall be set forth separately.

**3.2.3** The following information may be redacted from the copy of the answer served on the charging party:

**3.2.3.1** Employment records of individuals other than the charging party;

**3.2.3.2** Medical records of individuals other than the charging party;

**3.2.3.3** Confidential trade secrets; and

**3.2.3.4** The identity of witnesses who respondent intends to produce.

**4.0 Preliminary Findings and Recommendations**

- 4.1 Timing of preliminary findings and recommendations.
- 4.1.1 The administrator shall issue preliminary findings and recommendations within 60 days from the date of service of the charge on the respondent as required by 19 Del.C. §712(c)(2).
- 4.2 Form and content of preliminary findings and recommendations.
- 4.2.1 The preliminary findings and recommendations shall ~~set forth~~ include the following:
- 4.2.1.1 A ~~brief~~ statement of whether or not the respondent filed an answer;
- 4.2.1.2 A referral to mediation ~~or~~ investigation, or ~~recommending~~ a recommendation of dismissal.
- 4.3 Service of preliminary findings and recommendations.
- 4.3.1 Within one business day of issuing the preliminary findings and recommendations, the department shall cause a copy to be mailed to each party by U.S. ~~mail~~ Mail.
- 4.4 Criteria for preliminary recommendation of dismissal.
- 4.4.1 In determining whether to issue a preliminary recommendation of dismissal, the administrator shall ~~take the following factors into account based on a~~ review ~~of~~ all information submitted by the parties that has been properly served as required by 19 Del.C. §712(c)(1)[, and shall consider the following factors]:
- 4.4.1.1 The nature of the discrimination charged;
- 4.4.1.2 ~~Probability~~ The probability of obtaining additional evidence that may ~~impact~~ affect the department's final determination after full investigation; and
- 4.4.1.3 Whether the public interest is best served by the continuation of the investigatory process.
- 4.4.2 Before dismissing a case under 19 Del.C. §712(c)(2) the administrator shall notify the charging party of the reason for the recommendation, and shall offer the charging party at least 14 days to present additional information ~~which warrants that would warrant~~ further investigation.
- 4.4.2.1 The administrator in his sole discretion shall determine whether additional information provided warrants further investigation.
- 4.4.2.2 If the charging party does not present additional information ~~which that~~ warrants further investigation within the stated time, the department may dismiss the case and issue a Delaware Right to Sue Notice.

**5.0 Mediation**

- 5.1 Confidentiality of Mediation Communications and Records.
- 5.1.1 All information exchanged during mediation proceedings are considered dispute resolution communications and shall be kept confidential. Records obtained in the course of mediation should remain confidential and not be used as evidence in any manner unless obtained independent of the mediation. Parties participating in the mediation process shall be required to sign and adhere to a confidentiality agreement in a form approved by the administrator.
- 5.1.2 Mediation settlement agreements are confidential and shall not be disclosed by the department except where the department seeks enforcement of the agreement under Section 5.3.
- 5.2 Mediation proceedings.
- 5.2.1 At any time following the time for filing an answer, the administrator at his discretion may refer a case to the mediation unit for mediation proceedings.
- 5.2.2 The mediation director may designate a mediator employed by the department or otherwise appointed by the mediation director to conduct the mediation proceedings.
- 5.2.3 If the mediation does not result in a settlement agreement, the mediation director shall refer the case to the investigation unit.
- 5.2.4 If the mediation does not result in a settlement agreement and the respondent has not yet filed an answer, the respondent must file an answer to the charge within 20 days of the respondent's receipt of notification that the charge is being referred to the investigation unit.

5.2.5 If the mediation does not result in a settlement agreement and the respondent has filed an answer, the respondent must file a response to any pending request for information, and may file a supplementary answer, within 20 days of the respondent's receipt of notification that the charge is being referred to the investigation unit.

5.2.6 The mediation director and staff, including appointed mediators, may not participate in the investigation of any case referred to the investigation unit.

## 5.3 Enforceability of mediation settlement agreements.

5.3.1 A [mediation] settlement agreement reached during a mediation conference shall be set forth in writing and signed by the parties.

5.3.2 Allegations of breach of a [mediation] settlement agreement [reached during a mediation conference] shall be brought to the attention of the mediation director. The mediation director shall review and investigate the allegations of breach of a mediation settlement agreement to determine whether a breach has occurred.

5.3.3 The mediation director shall issue written findings to the parties with regard to the allegation of breach of a mediation settlement agreement.

5.3.4 The administrator in his discretion will determine whether to forward the allegations of a breach of the mediation settlement agreement to the Attorney General for review.

## **6.0 Investigation**

### 6.1 Timing of investigations.

6.1.1 The administrator shall promptly initiate an investigation into stated allegations of discrimination when:

6.1.1.1 The administrator refers a charge for investigation in accordance with 19 Del.C. §712(c)(2)(c); or

6.1.1.2 The mediation director refers a case to the investigation unit after unsuccessful mediation.

6.1.2 The department shall complete its investigation as promptly as possible.

### 6.2 Investigatory procedures.

6.2.1 ~~In the conduct of investigations, all~~ All investigatory powers granted by 19 Del.C. §§107-108 shall be available to the department. In its discretion, the department may conduct investigations using, among other things, written requests for information, fact[-]finding conferences, subpoenas, on[-]site visits, interviews, and depositions as provided in these regulations.

6.2.2 In connection with an investigation, the department may require the submission of information relating to:

6.2.2.1 The race, marital status, genetic information, color, age, religion, sex, national origin or disability of employees;

6.2.2.2 The employment records of employees;

6.2.2.3 The procedures for advertising or notifying the public of the availability of jobs;

6.2.2.4 The procedures for hiring or selecting employees;

6.2.2.5 The testing, seniority, promotion and discharge procedures; and

6.2.2.6 Such other information as the department determines to be reasonably necessary to carry out the provisions of the Discrimination in Employment Act or Handicapped Persons Employment Protections Act.

### 6.3 Requests for Information.

6.3.1 The department may serve requests for information to assist the department in its investigation. Unless otherwise specified in a request for information, the response shall be due to the department within 14 days following service.

### 6.4 On[-]Site Visits.

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# FINAL REGULATIONS

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- 6.4.1 The department may conduct on[-]site visits to assist the investigatory process for the purpose of gathering evidence, interviewing witnesses, observing a respondent's facilities, and reviewing documents.
- 6.4.2 The department shall provide the respondent with written notice of the on[-]site visit at least 14 days prior to the visit. The notice shall specify the date and time of the visit.
- 6.4.3 The respondent shall grant access to its premises, documents, and employees during a scheduled on site visit.
- 6.5 Subpoenas.
- 6.5.1 The administrator may issue a subpoena as he deems necessary to assist the investigatory process. The administrator shall issue a subpoena in the name of the department, and the subpoena shall direct the person designated to personally appear and bring any books, records, documents and any other evidence **[which that]** relates to any charge under investigation, or, in lieu of personal appearance, to produce any books, records, documents and any other evidence which relates to any charge under investigation.
- 6.5.2 A subpoena shall state the time and place where the person designated is directed to appear.
- 6.5.3 A subpoena shall be served either by personal service by any person 18 or more years of age by delivery of a copy thereof to the person named therein, by overnight delivery by commercial courier, or by registered or certified mail, return receipt requested.
- 6.6 Depositions.
- 6.6.1 The department may take depositions of witnesses under oath as part of any investigation when, in the discretion of the administrator, such depositions will aid the investigatory process.
- 6.7 Enforcement of subpoenas.
- 6.7.1 If any person fails to comply with a subpoena issued by the department, he shall be subject to the appropriate enforcement provisions of 19 **Del.C.** §108.
- 6.8 Fact-finding conferences.
- 6.8.1 Fact-finding conferences, as part of a discrimination investigation, are subject to the following:
- 6.8.1.1 As part of its investigation and at the discretion of the administrator, the department may convene a fact-finding conference for the purpose of obtaining evidence, identifying the issues in dispute, ascertaining the positions of the parties and exploring the possibility of settlement. The fact-finding conference is not an adjudication of the merits of the charge.
- 6.8.1.2 The department shall provide the parties with written notice of the fact[-]finding conference at least 30 days prior to the conference. The notice shall specify the date, time and location of the conference and shall identify the individuals requested to attend on behalf of each party, and any documents **[which that]** a party is requested to provide at the conference.
- 6.8.2 The conference shall be conducted as follows:
- 6.8.2.1 The department employee acting as fact-finder shall conduct and control the proceedings.
- 6.8.2.2 With prior notice to the department, the parties may request to bring witnesses to the conference in addition to those whose attendance may be specifically requested by the department. The fact-finder has discretion over which witnesses shall be heard and the order in which they are heard. The fact-finder may exclude any witness or other person from the conference, except **[that]** one representative of each party and counsel shall be permitted to remain throughout.
- 6.8.2.3 The department may request the parties to provide affidavits from witnesses who intend to appear at the fact-finding conference.
- 6.8.2.4 A party may be accompanied at a fact-finding conference by his or her attorney, and by a translator, if necessary.
- 6.8.2.5 An attorney for a party who has not previously entered his appearance shall do so at the outset of the conference.

- 6.8.2.6 Because the fact-finding conference is a means of investigation and not a hearing on the merits of a case, the parties shall not be entitled to cross-examine witnesses. All questioning shall be conducted by the fact-finder, unless in his discretion the fact-finder permits questions to be asked by other persons present at the conference.
- 6.8.2.7 During the conference, the fact-finder may allow a recess to permit the parties to discuss settlement.
- 6.8.3 Postponements of a fact-finding conference shall be subject to the following:
- 6.8.3.1 Except in extraordinary circumstances, requests for postponements must be made by notice to all parties at least 14 days prior to the conference.
- 6.8.3.2 Any opposition to a request for postponement must specifically state the basis for the opposition and must be received by the department at least seven days prior to the conference.
- 6.8.3.3 If a party or witness fails to appear at a scheduled fact-finding conference, the department may proceed with the conference without the party **[or witness]**.
- 6.8.4 If the respondent or the charging party refuses or fails to attend a scheduled fact-finding conference, the department may in its discretion schedule an alternate conference date. The department may subpoena any party or witness who failed to attend the initially scheduled fact-finding conference. The department may also subpoena any documents **[which that]** either party was **[requested asked]** to bring, **[and but]** failed to bring, to the fact-finding conference.

## **7.0 Administrative Dismissal**

- 7.1 The administrator may in his discretion administratively dismiss a charge for reasons including but not limited to the following:
- 7.1.1 Lack of jurisdiction;
- 7.1.2 The charging party is unavailable or unwilling to participate in the investigation, or to attend a scheduled conference or conciliation;
- 7.1.3 Relief is precluded by the respondent's bankruptcy or other special circumstances as determined by the administrator;
- 7.1.4 The charge was not timely filed under 19 **Del.C.** §712(c); or
- 7.1.5 The charge on its face fails to state a claim under the Delaware Discrimination in Employment Act or Handicapped Persons Employment Act.
- 7.2 The department will determine whether to administratively dismiss a charge under 19 **Del.C.** §712(c)(5).
- 7.3 Prior to administratively dismissing a charge under 19 **Del.C.** §712(c)(5) for lack of jurisdiction, untimeliness or failure to state a claim, the administrator shall notify the charging party of the reason for the proposed dismissal and shall offer the charging party the opportunity to respond.
- 7.3.1 The administrator shall make his final determination, considering all responses received within 14 days of the date of notice.

## **8.0 Withdrawal of Charge of Discrimination**

- 8.1 A pending charge may be withdrawn by the charging party within 60 days of the commencement of the action. After 60 days the charge may only be withdrawn with the consent of the administrator.
- 8.2 A request for withdrawal shall be in writing and shall be signed by the charging party and his attorney if applicable.

## **9.0 Final Determinations**

- 9.1 Issuance of findings.
- 9.1.1 Following the completion of an investigation of a charge, the administrator shall determine whether or not **[there is]** reasonable cause **[exists to support the allegations of the charge to believe]**

**that the respondent has committed or is committing an unlawful employment practice in violation of 19 Delaware Code, Chapter 7, Subchapter II or III].**

- 9.1.2 If the administrator determines that **[there is]** reasonable cause **[exists]** to believe a violation of 19 **Del.C. [Chapter].** 7, Subchapter II or III has occurred, he shall issue to the parties a finding of reasonable cause.
- 9.1.3 If the administrator determines that the conditions for issuing a finding of reasonable cause have not been met, he shall issue a finding of no reasonable cause.
- 9.1.4 If the administrator determines that reasonable cause exists as to some but not all of the allegations of the charge, he shall issue a determination setting forth those issues to which he finds reasonable cause exists and those issues to which he finds no reasonable cause exists.
- 9.1.5 Subject to the provisions of section 9.2, a Notice of Final Determination is final when issued.
- 9.2 Request for reconsideration of finding of reasonable cause.
- 9.2.1 A party requesting reconsideration of a finding of reasonable cause shall file a written request to the administrator within ten days of receipt of the finding, with a copy to the **[opposing party other parties]**.
- 9.2.2 The administrator shall determine whether reconsideration is warranted within ten days of **[its]** receipt **[of the request for reconsideration]**.
- 9.2.2.1 The administrator in his sole discretion shall determine what if any further supporting evidence or information is needed to complete his review, and shall offer the party at least fourteen days to present additional information.
- 9.2.3 The administrator shall issue his written decision to the parties. The administrator's decision is final when issued.

## **10.0 Conciliation**

- 10.1 Timing of conciliation proceedings.
- 10.1.1 Within 30 days from the date of a final determination of **[a]** reasonable cause**[a]**, every attempt will be made to commence conciliation proceedings for the purpose of negotiating a settlement of the charge and compliance with **[all affected the pertinent]** statutes.
- 10.2 Confidentiality of conciliation records.
- 10.2.1 All information exchanged during conciliation proceedings are considered dispute resolution communications and shall be kept confidential. Records obtained in the course of conciliation should remain confidential and not be used as evidence in any manner unless obtained independent of the conciliation. Parties participating in the conciliation process shall be required to sign and adhere to a confidentiality agreement in a form approved by the administrator.
- 10.2.2 Conciliation settlement agreements are confidential and shall not be disclosed by the department except where the department seeks enforcement of the agreement under Section 11.
- 10.3 Conciliation conference proceedings.
- 10.3.1 After a finding of reasonable cause, the administrator shall schedule a conciliation proceeding.
- 10.3.2 The **[parties administrator]** shall **[have give the parties]** at least 14 days notice of the date, time and place of the conciliation proceeding.
- 10.3.3 The department employee acting as conciliator shall conduct and control the proceeding.
- 10.3.4 A party may be accompanied at a conciliation proceeding by his or her attorney or another representative, and by a translator, if necessary.
- 10.3.5 The conciliator may exclude any person from the conciliation proceeding, except **[that]** counsel and translators shall be permitted to remain throughout.
- 10.3.6 An attorney for a party who has not previously entered his appearance shall do so at the outset of the proceeding.
- 10.3.7 A party's failure to attend the conciliation proceeding may be deemed to be a failure of conciliation effort.

10.3.8 Any conciliation agreement shall be subject to the approval of the department.

## **11.0 Enforceability of settlement agreements.**

- 11.1 A settlement agreement reached during investigation or conciliation shall be set forth in writing and signed by the parties.
- 11.2 Allegations of breach of a settlement agreement shall be brought to the attention of the administrator. The administrator shall review and investigate the allegations of breach of a settlement agreement to determine whether a breach has occurred.
- 11.3 The administrator shall issue written findings to the parties with regard to the allegation of breach of a settlement agreement.
- 11.4 The administrator in his discretion will determine whether to forward allegations of breach of the settlement agreement to the Attorney General for review.

## **12.0 Delaware Right[-]to[-]Sue Notice**

- 12.1 Issuance of a Delaware Right[-]to[-]Sue Notice.
  - 12.1.1 The administrator shall issue a Delaware Right[-]to[-]Sue Notice under 19 Del.C. §712(c)(3), (5) upon the following:
    - 12.1.1.1 Issuance of a final determination of no reasonable cause;
    - 12.1.1.2 Failure of conciliation efforts; or
    - 12.1.1.3 Administrative dismissal of the charge **[in accordance with Section 7].**
  - 12.1.2 The administrator may issue a Delaware Right[-]to[-]Sue Notice while the charge is pending upon the following:
    - 12.1.2.1 At the request of the Charging Party; or
    - 12.1.2.2 By initiation of the administrator, in his discretion.
  - 12.1.3 Termination of proceedings.
    - 12.1.3.1 Issuance of a Delaware Right[-]to[-]Sue Notice shall terminate further proceedings of the charge by the department.

## **13.0 Service of Recommendations, Determinations, and Notices**

- 13.1 All preliminary recommendations, final determinations and Delaware Right[-]to[-]Sue Notices shall be promptly served on all parties by U.S. Mail or ~~[as otherwise indicated by written agreement of by other means as agreed upon in writing by]~~ the parties.

## **14.0 Access to Department's Investigatory Files**

- 14.1 Confidentiality of department's investigatory files.
  - 14.1.1 The department's investigatory records are confidential and exempt from public access under 29 Del.C. Ch. 100.
- 14.2 Parties' right to obtain factual documents.
  - 14.2.1 After issuance of a Delaware Right[-]to[-]Sue Notice under 19 Del.C. §712(c)(3), (5), while litigation is pending, a party to a charge may make a written request to the administrator for copies of the following information in the department's file of that charge:
    - 14.2.1.1 Witness statements; and
    - 14.2.1.2 All factual written data, factual written reports or documentary information obtained or provided to the department in the course of its investigation **[which that]** is not otherwise subject to confidentiality or privilege.
- 14.3 A request made under this section must certify that a copy was mailed to the other party or his attorney where appropriate at the address provided.
- 14.4 Discovery of department's investigatory files by non-parties.

14.4.1 Non-parties to a charge shall not have access to the material in the department's investigatory file of that charge.

14.5 Copying Costs.

14.5.1 The department's fee for copying documents requested under this section shall be the same fee as is applicable to requests granted pursuant to 29 Del.C. Ch. 100. The administrator may waive or modify this fee in the case of an indigent party or in other extraordinary situations for good cause.

**15.0 Retention of Investigatory Files**

15.1 The department shall retain [~~investigative~~ investigatory] files for two years after the end of the administrative process.

15.2 Where a charge is filed concurrently with the United States Equal Employment Opportunity [Commission], the department shall retain the investigative file for two years after the end of the federal administrative process.

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Section 6010, (7 Del.C. §6010)  
7 DE Admin. Code 1302

Secretary's Order No.: 2008-0056

RE: Proposed Amendments to the *Delaware Regulations Governing Hazardous Waste (2008)*

Date of Issuance: November 17, 2008

Effective Date of the Amendment: December 21, 2008

#### I. Background:

A public hearing was held on Thursday, October 23, 2008, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the *Delaware Regulations Governing Hazardous Waste* (hereinafter referred to as "DRGHW"). The State of Delaware is authorized by the U.S. Environmental Protection Agency (hereinafter referred to as "EPA") to administer its own hazardous waste management program. In order for Delaware to maintain its program delegation and authority, EPA requires Delaware to maintain a program that is equivalent and no less stringent than the federal program.

Many of the changes that the Department is proposing to make at this time are already in effect at the federal level. Additionally, the Department is proposing to adopt optional federal regulations and make miscellaneous changes to correct errors and to add consistency or clarification to the existing regulations.

The proposed amendments to DRGHW were presented to the general public by the Department in a public workshop held on August 11, 2008. Comments were received from the regulated community as a result of this workshop, and those comments were included as part of the Department's exhibits entered into the record in this matter. No comments were received from the public or the regulated community regarding these proposed amendments at either the time of the public hearing or during the post-hearing phase of this proceeding. Proper notice of the hearing was provided as required by law.

#### II. Findings:

The Department has provided a reasoned analysis and a sound conclusion with regard to the responses given to each public comment received prior to the time of the public hearing, as reflected in the Hearing Officer's

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Memorandum of November 13, 2008, which is attached hereto and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

The Department has jurisdiction under its statutory authority, 7 **Del.C.** Chapters 60 and 63, to make a determination in this proceeding;

The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;

The Department held a public hearing in a manner required by the law and regulations;

The Department considered all timely and relevant public comments in making its determination;

The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

Promulgation of these proposed amendments would update Delaware's requirements, where appropriate, to be consistent with the federal requirements, thus bringing Delaware into compliance with EPA standards;

The correction of clerical errors currently found in Delaware's existing regulations will provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community;

The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;

The Department's proposed regulation, as published in the October 1, 2008 *Delaware Register of Regulations* and set forth within Attachment "A" of the Hearing Officer's Memorandum and attached hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect twenty days after its publication in the next available issue of the *Delaware Register of Regulations*;

The Department shall submit the proposed regulation as a final regulation to the Delaware Register of Regulation for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

### **III. Order:**

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated November 13, 2008 and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulations Governing Hazardous Waste be promulgated in final form in the customary manner and established rule-making procedure required by law.

### **IV. Reasons:**

The promulgation of the amendments to the State of Delaware Regulations Governing Hazardous Waste will update Delaware's requirements, where appropriate, to be consistent with the federal requirements, thus bringing Delaware into compliance with EPA standards. Again, the State is required to adopt these amendments in order to maintain its hazardous waste program authorization and remain current with the Federal RCRA hazardous waste program. Additionally, those changes being made to correct clerical errors currently found in Delaware's existing regulations will provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.**, Chapters 60 and 63.

John A. Hughes, Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the October 2008 issue of the *Register* at page 413 (12 DE Reg. 413). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**[Delaware Regulations Governing Hazardous Waste \(2008\)](#)**

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**DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES**
**DIVISION OF FAMILY SERVICES**
**Office of Child Care Licensing**

Statutory Authority: 29 Delaware Code, §9003; 31 Delaware Code, §§341-345  
(29 Del.C. §9003; 31 Del.C. §§341-345)

**PUBLIC NOTICE**
**DELACARE: Requirements for Family Child Care Homes and Requirements for Large Family Child Care Day Care Homes**
**Summary of the Evidence and Information Submitted**

The Office of Child Care Licensing (OCCL) seeks to adopt revisions to the formerly entitled *Delacare: Requirements for Family Child Care Homes and Delacare; Requirements for Large Family Child Care Homes* which were previously adopted in 1994. To start the revision process applicable research findings, best practice information and trends in regulations of other States were reviewed. In June 2007 four focus groups were held, one each in Kent and Sussex Counties and two in New Castle County, consisting of Family Child Care (FCC) Providers and Large Family Child Care (LFCC) Providers. Participants agreeing to attend were chosen through a random selection basis. The focus groups were conducted by the National Child Care Information Center, which submitted a report on the findings to the OCCL. In July 2007 a survey was sent to every licensed FCC and LFCC Provider to solicit their input on regulatory change. Responses were recorded and an analysis was conducted for common themes in responses. From August 2007 to October 2007, a task force of FCC Providers, LFCC Providers, representatives of the OCCL, subject experts, parents, representatives of the Executive and Legislative Branches of State Government and those whose interests could be affected by the rule changes met for the purpose of making recommendations for revised Requirements. The task force reviewed the existing *Delacare Requirements for Family Child Care Homes* and *Delacare Requirements for Large Family Child Care Homes*, were provided information from the findings of the focus groups and provider surveys and trends and issues noted by the OCCL. The task force made recommendations that were considered in revising the Rules. Four informational meetings were held throughout the State in December 2007 attended by 92 people. At the informational meetings, an explanation of the major revisions was offered and participants' concerns and questions were addressed.

A public comment period was offered from December 1, 2007 to January 16, 2008 in which a total of 261 people or agencies sent in written comments and/or offered verbal comments. Public hearings were conducted throughout the State as follows: January 7, 2008 – Georgetown, January 8, 2008 – Bear; January 9, 2008 – Dover; and January 10, 2008 – Wilmington. While all comments presented during the public hearing period were noted and taken into consideration, the following is a listing of the issues shared during the public comment period more than one time (see OCCL website as listed below for full report on public hearing comments):

- Keep the grandfathering option regarding the qualification of currently licensed FCC and LFCC Providers (178)
- Don't make it harder for FCC Homes to keep license and operate (129)
- In support of own FCC Provider (126)
- FCC Home is more personal environment (116)
- Keep in mind differences of FCC Homes verses Centers (49)
- Many parents prefer FCC Home environment for child care (29)
- Eliminating grandfathering of currently licensed FCC Providers could make them ineligible at renewal and have unintended consequence of reducing FCC Homes (26)
- Child Development Associate Credential (CDA), *Training for Early Care and Education (TECE) 1 and 2*, Delaware Stars Program and college level education should be voluntary for qualifications (26)
- Support all reasonable strategies to enhance professionalism for FCC (25)
- Count previous experience for currently licensed providers in lieu of new qualifications (25)
- Requirement of annual training essential to continued professional growth (24)

- Require minimum of high school diploma for Providers (19)
- Offer time frame to get high school diploma for already licensed Providers (17)
- Inappropriate to release medical records to the Office of Child Care Licensing (12)
- Agree with not be able to provide child care for 24 hours (12)
- Substitute who are alone with children should have CPR and 1<sup>st</sup> Aid training (8)
- Agree with no TV viewing for children under 2 years of age (8)
- Agree with limited use of a Substitute (7)
- Rules are required for health, safety and protection of children (6)
- Did not get a copy of proposed rule changes (6)
- Learning activities are important (6)
- Supportive of enhanced/improved qualifications (5)
- Don't agree with not requiring (grandfathering option) high school diploma for currently licensed FCC Providers (4)
- Want pre-service & on-going professional development to be more strenuous (4)
- Do not make any changes (4)
- Do not agree with needing to be awake at all times when providing child care (4)
- Disagree with sign-in sheet for FCC (4)
- "Back to Sleep" – requiring infants to be placed on their back for sleeping – is important (4)
- Curriculum planning with training (4)
- Allow community-based training to count toward qualifications (3)
- Center educational qualifications are just as important for FCC and LFCC (3)
- Make *TECE 1* mandatory to qualify for FCC and LFCC (3)
- Kids in FCC deserve same as in Centers (3)
- Professional development opportunities are in place for proposed revisions (3)
- Providers not informed, need more time (3)
- Proposed rules = more documentation and paperwork (3)
- Parents can evaluate quality & performance of Provider (3)
- Rules are interfering with parental authority (3)
- Proposed changes = cost increases – rates of payment will go up (3)
- Need further clarification on use of substitute for emergencies verses regular use of substitute (3)
- Count CPR and 1<sup>st</sup> Aid training toward annual training requirement (3)
- Taking attendance of children in FCC is not necessary (2)
- Parents have right to choose what suits them (2)
- Not issuing license due to dependency issues is too broad (2)
- More educated child care workforce translates to better quality care (2)
- Proposed educational regulations for FCC could limit parental choices of care (2)
- Count experience of currently licensed providers without complaints year after year as evidence of knowledge (2)
- Being alert to children but not fully awake should be option when providing night child care (2)
- Parents need availability of 24 hour care (2)
- Agree with enhanced rules for night care (2)
- Clarify core areas of training (2)
- Supportive of annual training revisions (2)
- Allow carryover of two clock hours of training each licensure year (2)
- No need for daily infant record (2)
- Add non-prescription medications to information in child's file (2)
- Change "nearest" to "appropriate" for police/hospital (2)
- Clarify ground & basement level rules (2)
- Requiring that animals are certified as free from disease is inane, expensive and no real value in protecting children (2)
- Support space requirements/square footage per child in FCC (2)
- No exemption for bike helmets based on wheel size (2)
- Why not wear bike helmets on climbing equipment? (2)

- Hand washing sink being no more than 10 feet from diaper changing area is too close (2)
- Eliminate “not” rinsing diapers (2)
- Be consistent with sleeping rules for infants and children – blanket, pillows (2)
- Children in FCC start education there; become life long learners (2)
- Support changes to Program for Children and Equipment (2)
- Providers should cooperate with Program representatives for Individualized Family Service Plans (2)
- Do not agree with no TV viewing for children under 2 years of age (2)
- TV viewing for children under 2 years of age = 40 minutes then offer interaction (2)
- TV watching should be decided between parent and provider (2)
- Agree with no computer use for children under 2 years of age (2)
- Allow use of walker for special needs situations (2)
- Add that meals should be flavorful, attractive in appearance, at appropriate temperature and preserved to maintain nutritional value (2)
- State that LFCC License/Owner not engage in retaliation or reprisals of staff members for reporting abuse/neglect
- For LFCC – have the option of 6 preschool children plus 3 school-age children like Level II FCC Homes (2)

Further revisions were made to the *Delacare: Rules for Family Child Care Homes* and *Delacare: Rules for Large Family Child Care Homes* based on all comments received during the public comment period. These revisions include the following:

- Edits for spelling and grammar
- Structure changes of some Rules to help with clarity of the information presented
- Some rules reordered for easier reference.
- Several new definitions added for words used within the document to help readers better understand the licensure process
- Informational session added to help applicants better understand the application and overall licensure process
- Any substitute (used for emergency or non-emergency situations) required to have background check and health appraisal
- Requirement for providing medical records to the OCCL removed
- Clarification of primary focus during hours of operation - providing child care and what are distracting activities
- Pre-service (prior to licensure) training hours for Licensee of a new Level I FCC Home and new LFCC Assistant changed to requirement of twelve clock hours of specific training within first year of licensure and such training counting toward the first year’s annual training requirement. This change was made due to concerns about the ability to offer such pre-service training often enough to be able to keep the licensure process as expedient and cost effective as possible.
- To control for quality and effectiveness of first year’s licensure training must be approved by Office of Child Care Licensing specifically for qualifying for this Level or position and contain at least three clock hours in each of the following topic areas: child development, educational activities for children, positive behavior management & families/communities.
- CPR and 1<sup>st</sup> Aid training allowed to count toward annual training requirement
- Clarification of which children present at the Family Child Care Home or Large Family Child Care Home count toward capacity
- Specific fall zone requirements under outdoor play removed from Rules
- Helmets required for any bicycle or tricycle that have foot pedals
- Pets with diseases that can be spread to humans can not be kept in rooms used by children in care
- Pets no longer have to have documentation by a licensed veterinarian as free from disease
- Eye dressing, CPR barrier device and small plastic or metal splints no longer required in first aid kit
- United States Department of Agriculture (USDA)/Child and Adult Care Food Program (CACFP) Meal Patterns and Policies required to be followed by FCC and LFCC Homes whether or not enrolled in CACFP program
- Specific references to Individualized Educational Program (IEP) and Individualized Family Service Plan

(IFSP) removed from LFCC Home rules; cooperation with parents/guardians/other agencies is required as per Americans with Disabilities Act (ADA) and as stated in FCC and LFCC such as adaptations and accommodations must be made in activities and materials to support the positive development of all children including those with disabilities

- Children under twenty-four months may engage in limited (no more than one hour per day) television, digital video display (DVD) and video cassette viewing
- Use of walkers allowed when medically prescribed by health care provider
- Children (based on particular age) in overnight care must sleep in a crib or bed with mattress that is not directly on the floor
- Children (based on particular age) must be monitored while napping/sleeping; monitoring must be documented
- Overall, revisions represent a movement toward improving standards that are designed to ensure the health and safety of children in care and enhance the quality of their experience so they will be better prepared to succeed in school and in life.

### **Finding of Facts**

The Office of Child Care Licensing is within the Division of Family Services, Department of Services for Children, Youth and their Families. The Secretary of this Department finds that the further revisions are non-substantive, that it is appropriate to amend 9 DE Admin. Codes 103 and 104 or as it was otherwise known as *Delacare: Requirements for Family Child Care Homes* and *Delacare: Requirements for Large Family Child Care Homes*, and to adopt the revisions to the rules. The new titles will become *Delacare: Rules for Family Child Care Homes* and *Delacare: Rules for Large Family Child Care Homes*. The adoption of the revisions is sought to establish a new baseline of care which more appropriately reflects accepted quality standards that support healthy, safe and enriching early care and education and school-age practices in Family Child Care and Large Family Child Care Homes. The 1994 *Delacare: Requirements for Family Child Care Homes* and *Delacare: Requirements for Large Family Child Care Homes* do not reflect the body of knowledge that has been acquired in the field of early care and education. The existing Requirements no longer offer adequate safeguards or protection for children in care nor do they promote standards and practices that promote optimal development and learning in order for children to be ready for and succeed in school and life.

### **Decision to Adopt the Rules**

For the foregoing reasons, the Department Secretary concludes that it is appropriate to revise **9 DE Admin. Codes 103 and 104** and adopt the revisions to create a new set of rules titled *Delacare: Rules for Family Child Care Homes* and *Delacare: Rules for Large Family Child Care Homes*. Therefore, pursuant to **31 Delaware Code**, Chapter 3, Subchapter III, Subsections 341-345, also known as "The Delaware Child Care Act" and **29 Delaware Code**, Chapter 90, Subsection 9003(7), **9 DE Admin. Codes 103 and 104** hereby adopted.

OCCL website - <http://kids.delaware.gov/occl/occl.shtml>

### **Text and Citation**

The text of **9 DE Admin. Codes 103 and 104** adopted hereby shall be in the form and said rules shall be cited as **9 DE Admin. Codes 103 and 104** in the Administrative Code of Regulations for the Department of Services for Children, Youth and their Families.

### **Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to **31 Delaware Code**, Chapter 3, Subchapter III, Subsections 341-345, also known as "The Delaware Child Care Act" and **29 Delaware Code**, Chapter 90, Subsection 9003(7) on (date). The effective date of this Order adopting *Delacare: Rules for Family Child Care Homes* and *Delacare: Rules for Large Family Child Care Homes* shall be on January 1, 2009.

IT IS SO ORDERED the 13th day of November 2008

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

Margaret J. Timki, Acting Secretary, Department of Services for Children, Youth and their Families  
Carlyse Giddins, Director, Division of Family Services  
Patricia Quinn, Administrator, Office of Child Care Licensing  
Approved for adoption on this 13th day of November 2008

**\*Please Note: Due to the size of the regulation, it is not being published here. A copy of the regulation is available at:**

[Requirements for Family Child Care Homes and Requirements for Large Family Child Care Day Care Homes](#)

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**DEPARTMENT OF STATE  
HUMAN RELATIONS COMMISSION**

Statutory Authority: 6 Delaware Code, Section 4506 (6 Del.C. 4506)  
1 **DE Admin. Code** 1501 and 1502

**ORDER**

**1502 Fair Housing Regulations**

A public hearing was held on September 11, 2008 to receive comments related to proposed amendments to the Fair Housing Regulations of the State Human Relations Commission ("Commission").

In accordance with 29 *Del.C.* Chapter 101 and 6 *Del.C.* §4616, the Commission proposed amendments to the Fair Housing Regulations. The changes are required to clarify hearing procedures and to comply with changes to "The Delaware Fair Housing Act" 6 *Del.C.* Chapter 46, and 31 *Del.C.* Chapter 30, and other items. These amendments if approved will become part of the Commission's Regulations.

Pursuant to the Administrative Procedures Act, 29 *Del.C.* § 10115, notice of the proposed amendments to the Regulations was published on August 1, 2008 in the Delaware Register of Regulations, Volume 12, Issue 2 as well as in the News Journal and Delaware State News on August 7, 2008.

Commission Chair Calvin Christopher conducted the public hearing on Thursday, September 11, 2008 at 7:00 p.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904.

**Summary of the Evidence and Information Submitted**

**1.2:** Addition of definition of "Minor"

"**Minor**" means a person under the age of eighteen years who has not been court emancipated.

**7.7:** Typographical corrections - "that" in the second line changed to "than" and "proceeding are" in the last sentence should be "proceedings are" such that 7.7 will read:

7.7 Any party may elect in writing to proceed for judicial determination rather than the administrative hearing before the Commission by notifying the Division within twenty (20) days of receiving the charge. If an election for judicial determination is made, the Respondent is not required to file an answer to the charge with the Division. The subsequent proceedings are subject to the rules of the Court.

**11.5:** Change "ten days" to "20 business days" such that 11.5 will read:

11.5 As provided in 6 Del.C. § 4510, a subpoena shall be issued upon written request by any Party, Staff or Panel member. Such requests shall be submitted no later than twenty (20) business days in advance of the hearing. Witnesses and documents requested in the subpoena must be clearly described in writing. The consequence of failure to request a subpoena in a timely fashion shall be subject to the discretion of the Panel.

**11.6.2.1:** A new provision was added such that 11.6.2.1 will read:

11.6.2.1 Testimony shall be under oath or affirmation administered by the court reporter. If a court reporter is not present, witnesses shall be sworn in by the Panel Chair.

### **Comments Concerning Fair Housing Regulations**

#### **Written Comment:**

Public comments were received from three sources. All of the comments were made in writing, were timely received by the Commission, and were exactly the same. Comments were received from: Jamie Wolfe, Chair of the Delaware Developmental Disabilities Council dated April 16, 2008; Robert D. Overmiller, Chairperson of the Governor's Advisory Council for Exceptional Citizens dated April 22, 2008; and, Daniese McMullin-Powell, Chairperson of the State Council for Persons with Disabilities dated May 1, 2008. Jamie Wolfe, Chair of the Delaware Developmental Disabilities Council provided additional written comments in a letter dated August 18, 2008.

17. In §1.0, move "Special Administration Fund" to appear after "Respondent" to match Title 6 Del.C. §4602.

18. Although the concept of "direct threat" usually appears in the context of tenancy [Title 6 Del.C. §4603(c)], it could arise in some other housing contexts as well. Consider substituting "occupancy" for "tenancy" at the end of §1.0, definition is not limited to "tenancy".

19. §10.3 categorically precludes consideration of any motion not delivered 10 business days prior to hearing. This is too rigid. Literally, a party could not even file a motion for a continuance based on good cause 9 business days prior to hearing. The no-exceptions approach creates a conflict with §14.1.2.

20. §11.5 requires a request for subpoena to be submitted at least 20 business days prior to hearing. This is a long time. It would be less objectionable if there were a regulation establishing a long notice of hearing timeframe (e.g. minimum of 60 days). Otherwise, if a party were provided 30 calendar days notice of hearing, there would be no time to request a subpoena. A compromise would be 15 business days.

21. The period is missing at the end of §14.1.2.

22. §15.0 appears to address only 2 of the 3 means of qualifying as "housing for older persons" in Title 6 Del.C. §4202(16). The HRC may wish to consider whether §15.0 should be amended to address Title 6 Del.C. §4602(16)a.

#### **Verbal Comment:**

None.

### **Recommended Findings of Fact based on the Evidence and Information Submitted**

The following are findings based on the specific comments received.

17. In §1.0, move "Special Administration Fund" to appear after "Respondent" to match Title 6 Del.C. §4602.

The Committee made this change.

18. Although the concept of "direct threat" usually appears in the context of tenancy [Title 6 Del.C. §4603(c)], it could arise in some other housing contexts as well. Consider substituting "occupancy" for "tenancy" at the end of §1.0, definition is not limited to "tenancy".

The Commission rejected this comment as substituting "occupancy" for "tenancy" would expand the meaning beyond that contained in the Fair Housing statute.

19. §10.3 categorically precludes consideration of any motion not delivered 10 business days prior to hearing. This is too rigid. Literally, a party could not even file a motion for a continuance based on good cause 9 business days prior to hearing. The no-exceptions approach creates a conflict with §14.1.2.

The Commission accepted a middle ground so that Motions must be delivered at least 10 days before the hearing. In addition, the Commission agreed that whether or not motions untimely filed will be heard should be left to the discretion of the Hearing Panel. The second sentence was changed to, "Motions filed beyond this time limit may be considered at the discretion of the Panel."

20. §11.5 requires a request for subpoena to be submitted at least 20 business days prior to hearing. This is a long time. It would be less objectionable if there were a regulation establishing a long notice of hearing timeframe (e.g. minimum of 60 days). Otherwise, if a party were provided 30 calendar days notice of hearing, there would be no time to request a subpoena. A compromise would be 15 business days.

The Commission accepted this comment and changed the time to 20 days which will include Saturdays, Sundays and Holidays such that the time will be closer to the 15 business days suggested by the public commentators. The will have more time rather than less time to request subpoenas.

Because Section 14.1.1 does not contain the same provision concerning business days, the Commission added the following sentence to Regulation 14.1.1: "When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation." In addition, the proposed definition of "Business Days" has been removed.

21. The period is missing at the end of §14.1.2.

The Commission made this change.

22. §15.0 appears to address only 2 of the 3 means of qualifying as "housing for older persons" in Title 6 Del.C. §4202(16). The HRC may wish to consider whether §15.0 should be amended to address Title 6 Del.C. §4602(16)a.

The Committee did not accept this unnecessary change as 6 *Del.C.* §4602(16)a simply states that "housing for older persons means housing provided under any state or federal program that the Commission determines is specifically designed and operated to assist elderly persons."

WHEREAS the State Human Relations Commission have voted to approve the proposed amendments to the Fair Housing Regulations;

**IT IS THEREFORE ORDERED** this 13<sup>th</sup> day of November, 2008, that the Amendments to the Fair Housing Regulations as attached as Exhibit A are approved and will become effective on December 10, 2008.

### 1502 Fair Housing Regulations

ADOPTED: APRIL 8th, 1993

EFFECTIVE: MAY 10th, 1993

#### *(Break in Continuity of Sections)*

## 14.0 Miscellaneous Provision

### 14.1 Time.

14.1.1 In computing any period of time prescribed or allowed by these Rules, by order of court, or by statute, the day of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, or other legal holiday, or other day on which the Division of Human Relations is closed, in which event the period shall run until the end of the next day on which the Division is open. As used in this rule, "legal holidays" shall be those days provided by statute or appointed by the Governor or the Chief Justice of the State of Delaware. **[When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation.]**

14.1.2 When by these Rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the Commission for cause shown may at any time in its discretion.

14.1.2.1 with or without motion or notice order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order or

14.1.2.2 upon motion made after the expiration of specified period permit the act to be done where the failure to act was the result of excusable neglect.

- 14.1.3 Whenever a party has the right to or is required to do some act or take some proceeding within a prescribed period after being served and service is by mail, 3 days shall be added to the prescribed period.
- 14.2 Service. Unless otherwise specifically required by the Acts or these regulations, service of complaints, answers, other pleadings, charges, motions, requests or notices shall be made according to this Rule.
- 14.2.1 For the initial complaint and any pleading which brings in a new party, service shall be sufficient if made according to Superior Court Civil Rule 4(f), Rule 4(h) for service under 10 **Del.C.**, §3104, or by certified mail, return receipt requested with the return receipt card signed by (1) the person to be served, (2) a person living with or working in the office of the person to be served, or (3) an agent authorized by appointment or by law to receive service of process.
- 14.2.2 Once jurisdiction over a party has been established, service may be by certified mail, return receipt requested, or by hand delivery or mail pursuant to Superior Court Civil Rule 5(b), or by some other means of notice generally recognized in the community with some confirmation of the notice having been sent such as by regular first class mail to the parties' last known address as evidenced by a certificate of mailing, by an express mail service with a receipt showing the notice was delivered to the express mail company, or by telecopier or fax with confirmation of transmission from the sender's machine.
- 14.3 These regulations shall be liberally construed to accomplish the purpose of the applicable laws.
- 14.4 These regulations shall be reviewed periodically by the Commission or its designee and the Director of the Division of Human Relations. Any recommendations for change shall be submitted in writing to the Commission for consideration at a regularly scheduled meeting.
- 14.5 The Administrative Procedures Act (29 **Del.C.**, Ch. 101) shall provide the method by which these regulations may be amended.
- 14.6 Copies of these regulations shall be available during regular office hours at the Division of Human Relations or, upon request, by mail. A copy of the rules and regulations are also available on the Delaware Administrative Code website.

**\*Please Note: As the rest of the sections were not amended since the proposal in the August 2008 issue at page 179 (12 DE Reg. 179), they are not being published here. A copy of the final regulation is available at [1502 Fair Housing Regulations](#)**

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**DIVISION OF PROFESSIONAL REGULATION****500 Board of Podiatry**

Statutory Authority: 24 Delaware Code, Section 506(a)(1) (24 **Del.C.** §506(a)(1))  
24 **DE Admin. Code** 500

**ORDER**

The Delaware Board of Podiatry, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §506(a)(1), proposed amendments to its regulation section 5.0. Specifically, the proposed changes to section **5.0 Licenses (In-Training, Lapse/Renewal, Inactive)** creating a mandatory audit of all late-renewed licensees to verify compliance with the continuing education requirement. Other grammatical, typographic, or stylistic changes are also included.

In compliance with 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes was published in the Delaware *Register of Regulations*, Volume 11, Issue 10, at page 1352 on April 1, 2008. The public hearing was originally scheduled for Thursday, July 17, 2008, but required rescheduling. Notice of the rescheduled hearing was published in the Delaware *Register of Regulations*, Volume 12, Issue 2 under "Calendar of Events/Hearing Notices" on August 1, 2008.

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# FINAL REGULATIONS

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## Summary of the Evidence and Information Submitted

No written or verbal comments were received at the hearing.

## Findings of Fact

The Board finds that adoption of the proposed amendments is necessary to provide for automatic audit of all late renewing licensees and to clarify its regulations.

## Decision and Effective Date

The Board hereby adopts the proposed amendment to the regulations to be effective 10 days following final publication of this order in the *Register of Regulations*.

## Text and Citation

The text of the final regulations is attached hereto as Exhibit A and is formatted to show the amendment. A non-marked up version of the regulations as amended is attached hereto as Exhibit B.

**IT IS SO ORDERED** this 18<sup>th</sup> day of June 2008, by the **Board of Podiatry of the State of Delaware**.

Jeffrey Barton, D.P.M.  
Christopher Savage, D.P.M.  
Nathaniel Gibbs, Public Member

**\*Please note that no changes were made to the regulation as originally proposed and published in the April 2008 issue of the *Register* at page 1352 (12 DE Reg. 1352). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**500 Board of Podiatry**

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## OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b) (5 **Del.C.** §121(b))  
5 **DE Admin. Code** §2401

## Order Adopting New Regulation 2401

IT IS HEREBY ORDERED, this 13th day of November, 2008 that new Regulation 2401 is adopted as a regulation of the State Bank Commissioner. A copy of Regulation 2401 as adopted is attached hereto and incorporated herein by reference. The effective date of Regulation 2401 is December 11, 2008. The Regulation is adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the **Delaware Code**, as follows:

1. A notice of the proposed Regulation 2401 and its text was published in the October 1, 2008 issue of the *Delaware Register of Regulations*. Notices were also published in the September 30, 2008 edition of The News Journal, and the October 1, 2008 edition of The Delaware State News, and mailed to all persons who had made timely written requests to the Office of the State Bank Commissioner for advance notice of its regulation-making proceedings. The notices, among other things, summarized the proposed regulation, invited interested persons to submit written comments to the Office of the State Bank Commissioner at or before the hearing on the proposed regulation, and indicated that the proposed regulation was available for inspection at the Office of the State Bank

Commissioner, that copies were available upon request, and that a public hearing would be held on November 6, 2008 at 10:00 a.m. at the Office of the State Bank Commissioner in Dover, Delaware.

2. No written comments concerning the proposed new regulation were received on or before the hearing.

3. A public hearing was held on November 6, 2008 at 10:00 a.m. regarding proposed Regulation 2401. Robert A. Glen, State Bank Commissioner; Francis S. Babiarz, Deputy Bank Commissioner for Supervisory Affairs; Frank Broujos, Deputy Attorney General; Clare T. Crossan, Larry Doub, Kristina Rewis, Chris Rowe, and LaMontz Hayman from ACA Mortgage; Bryan Cochran from State Farm Insurance, and a court reporter attended the hearing. Mr. Broujos attended by telephone. No other persons were present.

4. The State Bank Commissioner and Deputy Commissioner Babiarz summarized the proposed new regulation. Deputy Commissioner Babiarz also noted that a manifest typographical error appeared in the proposed regulation. In Section 1.0, Definitions, Subsection (8), the term "Statute" was incorrectly defined as "24 Del.C. Chapter 24", when the definition should have read "5 Del.C. Chapter 24". Deputy Attorney General Broujos confirmed that this was a non-substantive technical error.

5. Mr. Rowe commented that he believed that the legislation on which the regulation was based should have been passed earlier. He believed that the statute's exemptions were too extensive and that market conditions had already filtered out many persons who had been acting improperly, so that the legislation now affected mostly smaller businesses. He added that he thought the statute would have much lower financial benefit to the State than anticipated and might not even produce enough funds to cover its costs. He also wanted the statute's education requirements to include reciprocity with other states to reduce the burden on licensees. Ms. Crossan stated that she supported Mr. Rowe's comments, especially with regard to the extensiveness of exemptions that apply to large companies. She believed that the statute should have no hiding places.

6. After review and consideration, the State Bank Commissioner finds that the comments by Mr. Rowe and Ms. Crossan relate to the statute (5 Del.C. Chapter 24) that the proposed regulation implements, rather than to provisions in the regulation itself. In particular, the proposed regulation does not alter or enlarge the statute's provisions about licensing exemptions or educational requirements. Moreover, the statute does not preclude education courses from being accepted to satisfy the educational requirements of more than one state.

7. Therefore, the State Bank Commissioner hereby adopts new Regulation 2401 as proposed, but with the non-substantive typographical error noted above corrected to read: "5 Del.C. Chapter 24".

Robert A. Glen, State Bank Commissioner  
November 13, 2008

**\*Please note that, with the exception of the typographical error, no changes were made to the regulation as originally proposed and published in the October 2008 issue of the *Register* at page 430 (12 DE Reg. 430). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[Order Adopting New Regulation 2401](#)

**GOVERNOR'S APPOINTMENTS**

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Advisory Council to the Division of Substance Abuse and Mental Health	Anthony J. Brazen, III, D.O.	10/07/2011
	Ms. Andrea Guest	10/07/2011
	Mr. James J. Lafferty	10/07/2011
	Ms. Elizabeth B. Pertzoff	10/07/2011
	Ms. Janet A. Ray	10/07/2011
	Gary L. Wirt, Ed.D.	10/07/2011
Architectural Accessibility Board	Mr. Neil C. Himelein	10/12/2009
Board of Accountancy	Mr. David C. Doane	10/02/2011
	Mr. Robert D. Mosch, Jr.	10/02/2011
	Ms. Carmetah L. Murray	10/02/2011
Board of Architects	Ms. Jean N. McCool	10/02/2011
Board of Chiropractic	Brian R. Chandler, DC	10/31/2011
	Ms. Jill K. Morrison	10/31/2011
Board of Dental Examiners	John J. Lenz, DDS	10/02/2011
Board of Electrical Examiners	Ms. Joyce B. Dyer	10/02/2011
Board of Examiners of Nursing Home Administrators	Mr. William H. Daisey	10/02/2011
	Mr. Thomas C. Tulley	10/02/2011
Board of Examiners of Psychologists	Marcia S. Halperin, Ph.D.	10/02/2011
	Gary M. Johnson, Ph.D.	10/02/2011
	Ms. Joan T. McDonough	10/02/2011
Board of Geologists	Ms. Lorene J. Athey	10/02/2011
	Mr. Scott C. Blaier	10/02/2011
	Ms. Kimberly K. McKenna	10/02/2011
Board of Landscape Architecture	Mr. Rodney D. Robinson	10/02/2011
	Mr. Matthew T. Spong	10/02/2011
Board of Massage and Bodywork	Ms. Sharon L. Harris	10/02/2011
Board of Medical Practice	Nasreen Khan, D.O.	10/02/2011
Board of Nursing	Ms. Rebecca D. Walker	10/02/2011
	Ms. Loretta M. Wootten	10/02/2011
Board of Pharmacy	Mr. Donald E. Holst	10/02/2011
Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration	Mr. James T. Anderson	10/02/2011
	Mr. Robert J. Briccotto, Jr.	10/02/2011
Board of Podiatry	Raymond V. Feehery, Jr., D.P.M.	10/02/2011

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# GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Board of Professional Counselors of Mental Health and Chemical Dependency Professionals	Ms. Vera E. Murrell	10/02/2011
	Mr. Clayton C. Yocum	10/02/2011
Board of Speech/Language Pathologists, Audiologists	Jennifer H. Xenakes, Au.D.	03/23/2009
Board of Veterinary Medicine	Courtney M. Manetti, DVM	10/02/2011
Cabinet Committee on State Planning Issues	Mr. Michael T. Scuse	At the Pleasure of the Governor
Child Death, Near Death and Stillbirth Review Commission	Ms. Kathy A. Janvier	10/07/2011
	Ms. Lani L. Nelson-Zlupko	10/07/2011
	Sr. Lt. Drew R. Outten	10/07/2011
Child Placement Review Board - Kent	Ms. Gail L. Allen	10/07/2011
	Ms. Mary Austria	10/07/2011
	Ms. Evelyn Figueroa	10/07/2011
	Ms. Mary M. Hauck	10/31/2011
	Mr. William Moyer	10/07/2011
	Ms. Tambra Parker	10/07/2011
	Ms. Dana S. Stonesifer	10/07/2011
Child Placement Review Board - New Castle	Ms. Mary W. Angerer	10/07/2011
	Ms. Nancy Czeiner	10/07/2011
	Ms. Mary Jane Johnson	10/07/2011
	Ms. K. Sun Moon	10/07/2011
	Ms. Mary R. Morgan	10/07/2011
	Ms. S. Ann Southmayd	10/07/2011
	Ms. Carol A. Stewart	10/07/2011
Child Placement Review Board - Sussex	Ms. Cora Norwood Selby	10/07/2011
	Ms. Ruth T. Tull	10/07/2011
Committee on Employment of People with Disabilities	Ms. Eleanor G. Allione	10/07/2011
	Ms. Lois A. Dawson	10/07/2011
	Mr. Griff Campbell	10/07/2011
	Ms. Loretta R. Harper-Brown	10/07/2011
	Mr. William R. Lindewirth	10/07/2011
	Mr. Charles D. Moore	10/07/2011
Community Involvement Advisory Council	Mr. Douglas Corey	10/17/2011
Council on Apprenticeship and Training	Mr. Thomas P. Shields	10/17/2011
Council on Archives	Mr. R. Brian Page	10/07/2011
Council on Banking	Mr. Joseph E. Chippie	10/17/2011
	Mr. Richard H. Derrickson	10/17/2011

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# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Council on Banking	Ms. Christina M. Favilla	10/17/2011
	Mr. Robert V.A. Harra, Jr.	10/17/2011
	Mr. Stephen C. Nelson	10/17/2011
	Mr. Edward Reznick	10/17/2011
	Mr. Clinton W. Walker	10/17/2011
Council on Boiler Safety	Mr. Paul W. Frank	10/17/2011
Council on Correction	Mr. C. Edwin Perez	10/13/2011
	Reverend John D. Ranney	09/15/2009
	Ms. Virginia S. Thogersen	10/13/2011
Council of Delaware Association of Professional Engineers	Mr. Vincent G. Robertson	10/13/2012
Council on Development Finance	Mr. Steven Biener	10/17/2011
	Mr. Thomas A. Gilligan	10/31/2011
Council on Forestry	Mr. Steven L. Ditmer, Sr.	10/17/2011
	Mr. Grace W. Lowe	10/17/2011
Council on Libraries	Ms. Elizabeth C. Baxter	10/13/2011
	Mr. Zachary C. Carter	10/13/2011
	Mr. Harlan R. Scott	10/13/2011
	Ms. Nancy L. Steele	10/13/2011
	Ms. Catherine W. Wojewodzki	10/13/2011
Council on Manufactured Housing	Mr. Ryan S. Class	10/13/2011
	Mr. Charles E. Cramer	10/13/2011
	Mr. John H. Morris	10/13/2011
Council on Police Training	The Honorable Carleton E. Carey	At the Pleasure of the Governor
	The Honorable James L. Ford, III	At the Pleasure of the Governor
Council on Real Estate Appraisers	Ms. Linda Carter	10/27/2011
Council on Services for Aging and Adults with Physical Disabilities	Ms. Carolyn E. Fredricks	10/07/2011
	Ms. Juanita S. Taylor	10/07/2011
Council on Social Services	Ms. Joan L. Caulk	10/13/2011
	Ms. Mable F. Cephas	10/13/2011
	Ms. Retha S. Fisher	10/13/2011
Council on Transportation	Mr. Irwin G. Burton	10/31/2011
	Mr. Marvin J. Davis	10/31/2011

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# GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Delaware Bicycle Council	Mr. Fred N. Breukelman	10/07/2011
Delaware Commission for Women	Ms. Raetta L. McCall	10/26/2010
Delaware Greenways and Trails Council	Ms. Peggy C. Koster Mr. James G. Ireland Mr. Paul H. Morrill, Jr. Mr. Alan M. Quillen Ms. Diane K. Wilson	10/30/2011 10/24/2011 10/13/2011 10/13/2011 10/13/2011
Delaware Humanities Council	Ms. Donna Henderson	10/07/2011
Delaware Institute of Dental Education and Research	Wanda Gardiner Smith, D.D.S.	10/02/2011
Delaware Institute of Medical Education and Research, Board of Directors	John A. Forest, Jr., MD Galicano F. Inguito, Jr., M.D. Vincent Lobo, Jr., D.O. Carl E. Turner, M.D.	10/17/2011 10/17/2011 10/17/2011 10/17/2011
Delaware Interagency Council on Homelessness	Ms. Helen Arthur Ms. Michelle Carre Ms. Rosemary J. Haines Ms. Marian L. Harris Mr. Kyle Hodges Ms. Carlyle Hooff Mr. James Kane Mr. M. Jeanine Kleimo Ms. Sheera M. Lipshitz Ms. Catherine Delvaney McKay Mr. Richard Pokorny Mr. John Teoli	At the Pleasure of the Governor At the Pleasure of the Governor
Delaware Manufactured Home Relocation Authority	Ms. Joanne M. Agostarola Ms. Heather L. Howell	06/30/2014 06/30/2014
Delaware Real Estate Commission	Mr. Ricky H. Allamong	10/02/2011

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# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Delaware Real Estate Commission	Mr. James C. Brannon, Jr.	10/02/2011
	Ms. Denise R. Stokes	10/02/2011
	Mr. Vincent M. White	10/02/2011
Delaware State Arts Council	Ms. Louellen H. Braithwaite	10/07/2011
	Ms. Joann E. Browning	10/07/2011
	Mr. Richard A. Givens, II	10/07/2011
	Ms. Guillermina Gonzalez	10/07/2011
	Ms. Margaret H. Johnson	10/07/2011
	Ms. Gail H. Lear	10/12/2010
Delaware State University Board of Trustees	Lillian M. Lowery, Ed.D.	10/17/2014
Dental Hygiene Advisory Committee	Ms. Fay S. Rust	10/02/2011
Developmental Disabilities Council	Ms. Alisa M. Olshefsky	10/13/2014
	Ms. Jennifer L. Ridgley	10/13/2014
Dover/Kent Metropolitan Planning Organization PAC	Mr. Guy H. Veach	04/23/2009
Federal Advisory Committee on Juvenile Justice	Ms. Carlyse Giddins	12/31/2010
	Mr. David T. Woods	12/31/2010
Governor's Advisory Council for Exceptional Citizens	Ms. Joanna L. Francis	At the Pleasure of the Governor
	Ms. Jennifer L. Ridgley	At the Pleasure of the Governor
Governor's Commission on Community and Volunteer Service	Edward W. Goate, Ed.D.	10/24/2011
	Mr. Frank R. Ingram, Jr.	10/24/2011
Governor's Consortium on Hispanic Affairs	Mr. Robert Heflin	At the Pleasure of the Governor
	Ms. Wanda Lopez	At the Pleasure of the Governor
Governor's Council on Agriculture	Mr. Paul Cartanza	10/17/2011
	Mr. Kenneth Wicks	10/17/2011
Governor's Council on Hispanic Affairs	Ms. Della M. Miller	10/31/2011
	Ms. Cynthia M. Mitchell	10/07/2011
Greater Wilmington Convention and Visitors	The Honorable Joseph G. DiPinto	06/30/2011
	Mr. Ronald Kosh	06/30/2011
Health Facilities Authority	Mr. Desmond A. Baker	10/13/2013
	Mr. Rolf F. Eriksen	10/13/2013
	Ms. Lisa More	10/13/2013
	Mr. Willam J. Riddle	10/13/2013

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# GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Human Relations Commission	Mr. Lorenzo H. Murdaugh	04/12/2009
Interagency Coordinating Council	Susan A. Cycyk, M.Ed. Ms. Regina L. Huddleston Ms. Mary H. Knapp Ms. Pamela S. Lilly Ms. Alisa M. Olshefsky	10/07/2011 10/07/2011 10/07/2011 10/07/2011 10/12/2010
Interstate Compact on Education for Children of Military Families, Compact Commissioner	Ms. Susan Keene Haberstroh	At the Pleasure of the Governor
Kent County Vocational-Technical Board of Education	Ms. Cynthia D. Brown Mr. James J. Collins Mr. Jeff Davis Ms. Linda K. Hargett Mr. Frank R. Ingram, Jr. Ms. Sandra E. Walls	10/13/2015 10/31/2015 08/24/2012 10/31/2015 10/13/2015 10/13/2015
Newark Housing Authority	Ms. Jacquelyn Baldwin	10/24/2014
Parks and Recreation Council	Mr. Gregory E. Johnson Mr. Ronald F. Whittington	10/13/2011 10/13/2011
Riverfront Development Corporation Board of Directors	Ms. Margaret Hannum	At the Pleasure of the Governor
State Committee of Dietetics/Nutrition	Ms. Elizabeth A. Tschiffely	10/02/2011
State Emergency Response Commission	Mr. James Lee Mr. Steve J. Owens	10/24/2010 10/13/2010
State Examining Board of Physical Therapists and Athletic Trainers	Ms. Holly L. Malone Mr. W. Wayne Woodzell	10/02/2011 10/02/2011
State Fire Prevention Commission	Mr. Ronald H. Marvel Mr. Robert W. Ricker	At the Pleasure of the Governor 10/13/2014
State Rehabilitation Council	Ms. Alice S. Coleman Ms. Jennifer L. Ridgley Mr. Steven J. Slotkin	10/07/2011 10/07/2011 10/07/2011
Statewide Independent Living Council	Ernest G. Cole, Ed.D. Ms. Shirley A. Gipson Ms. Andrea J. Wozny	10/13/2011 10/13/2011 10/13/2011
Sustainable Energy Utility Oversight Board	John Byrne, Ph.D. Ms. Sharron M. Cirillo Mr. Randall Day	10/20/2012 10/22/2012 10/20/2010

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**GOVERNOR'S APPOINTMENTS**


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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Sustainable Energy Utility Oversight Board	Mr. Roger L. Jones, Jr.	10/20/2010
	Mr. Joe W. Loper	10/20/2011
	Charles G. Wagner, MD	10/20/2012
Unemployment Compensation Advisory Council	Mr. Robert L. Byrd	10/17/2011
Vocational Rehabilitation Advisory Council for DVI	Ms. Alice S. Coleman	10/07/2011
Welfare Employment Committee	Ms. Carol R. Aiken	10/13/2011
	Ms. Catherine C. Halen	10/13/2011
	Mr. Micheal D. Patterson	10/13/2011
	Ms. Margaret G. Shivone	10/13/2011
Wilmington Housing Authority	Ms. Mary Ann Miller	10/17/2011
Workers' Compensation Advisory Council	Mr. John D. Daniello	10/17/2011
	Mr. James Maravelias	10/31/2011

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## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)  
(14 Del.C. §122(b) and §154(e))

### IMPLEMENTING ORDER

#### STATE BOARD OF EDUCATION PROCEDURES MANUAL

##### Background and Context of Regulation

The State Board of Education's *Procedures Manual* includes descriptions of the Board's organization and operations, its meeting procedures and its rules of hearing practice, among other items.

The State Board concludes it is necessary to amend the *Procedures Manual* to:

- (1) Revise citations to the Delaware Code outlining the State Board's jurisdiction to the extent statutes have been re-numbered, added, or deleted as a result of legislative changes;
- (2) Delete the specific reference to the "Administrative Manual for Special Education Services" and replace it with a reference to the Department's regulations governing special education;
- (3) Update the telephone and fax numbers listed for the State Board;
- (4) Permit parties to initiate appeals to the State Board by sending a notice of appeal by facsimile; and
- (5) To further clarify the rules applicable to appeals filed with the State Board.

These changes are exempted from the procedural requirements of the *Administrative Procedures Act* to 29 Del. C. 10113(b)(1), (2), (4) and (5). As a result, the State Board may adopt these changes informally.

#### ORDER ADOPTING REGULATIONS

The State Board of Education concludes that it is appropriate to amend the *Procedures Manual* as described above. The amended regulations are attached as Exhibit "A" and are hereby adopted by the State Board of Education as its *Procedures Manual*, effective immediately.

Approved this 23rd day of October, 2008.

#### STATE BOARD OF EDUCATION

Jean W. Allen, President  
G. Patrick Heffernan  
Barbara Rutt  
Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President  
Jorge L. Melendez  
Dennis J. Savage

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# GENERAL NOTICES

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## State Board of Education Procedures Manual

September 1998  
(Revised: 2001, 2002, 2004 ~~and 2006~~, 2006 and 2008)

### Legal Basis and Related Issues

#### Statutory Basis

The State Board exists pursuant to 14 **Del.C.** §104(a), which states the following:

(a) The State Board of Education shall be composed of 7 members who shall be citizens of the State and shall be appointed by the Governor and confirmed by the Senate. The Governor shall name the President of the Board who shall serve at the Governor's pleasure. Each of the remaining members of the Board shall be appointed to serve for 6 years and until his or her successor qualifies.

#### Board Structure

##### Membership

In accordance with 14 **Del.C.** §104(a), the State Board is composed of 7 members.

##### Appointment

In accordance with 14 **Del.C.** §104(a), the State Board members are appointed by the Governor and confirmed by the Senate.

##### Qualifications

The qualifications for membership on the State Board of Education are specified in 14 **Del. C.** §104(d), which states the following:

(d) The members of the Board shall be appointed solely because of their character and fitness subject to the following qualifications: At least 2 members of the Board shall have had prior experience on a local board of education; no more than 4 members of the Board shall belong to the same political party; no person shall be eligible to appointment who has not been for at least 5 years immediately preceding appointment a resident of this state; and no person shall be appointed to the Board who is in any way subject to its authority.

Any member of the Board shall be eligible for reappointment unless otherwise disqualified by this title. In constituting the Board, the President shall be appointed from the State at large, but the appointments of the remaining 6 members shall be made so that there shall be on the Board at least 1 resident of the City of Wilmington, 3 residents from New Castle County outside the City of Wilmington, 1 from Kent County and 1 from Sussex County.

##### Terms

The President of the Board serves at the pleasure of the Governor 14 **Del.C.** §104(a). The terms for the remaining 6 members are "6 years and until his or her successor qualifies" 14 **Del.C.** §104(a). However, §104(f) provides that the "Governor may appoint members for confirmation by the Senate for terms shorter than 6 years where that is necessary to ensure that Board members' terms expire on a rotating annual basis".

##### Compensation

The compensation of State Board members is specified in 14 **Del. C.** §104(h), which states the following:

(h) The members of the Board shall receive \$100 for each day's attendance at the meetings of the Board not to exceed 24 days' attendance in any 1 calendar year; and they shall be reimbursed for ~~the~~ their actual travel and other necessary expenses incurred in attending meetings and transacting the business of the Board.

## Vacancies

“Vacancies on the Board for any cause shall be filled by the Governor for the unexpired term and until a successor shall qualify” 14 **Del.C.** §104(e).

## Powers, Duties and Responsibilities

The powers, duties, and responsibilities of the State Board of Education are delineated primarily in **Delaware Code**, Title 14. The general powers are specified in 14 **Del.C.** §104(b), which follows. However, the specific powers, duties, and responsibilities, as cited in the **Code**, are detailed more fully in Appendix A, where the specific citations and a brief paraphrase of the statutes are given.

(b) The State Board of Education shall have powers, duties, and responsibilities as specified in this title. Included among the powers, duties and responsibilities are those specified in this subsection. The State Board of Education shall:

- (1) Provide the Secretary of Education with advice and guidance with respect to the development of policy in those areas of education policy where rule- and regulation-making authority is entrusted jointly to the Secretary and the State Board. The State Board shall also provide guidance on new initiatives, which may from time to time be proposed by the Secretary. The Secretary shall consult with the State Board regularly on such issues to ensure that policy development benefits from the breadth of viewpoint and the stability which a citizens' board can offer and to ensure that rules and regulations presented to the State Board for its approval are developed with input from the State Board. Consistent with its role in shaping critical educational policies, the State Board of Education may also recommend that the Secretary undertake certain initiatives which the State Board believes would improve public education in Delaware;
- (2) Provide the Secretary of Education with advice and guidance on the Department's annual operating budget and capital budget requests;
- (3) Provide the Secretary of Education with guidance in the preparation of the annual report specified in §124 of this title, including recommendations for additional legislation and for changes to existing legislation;
- (4) Provide the Secretary of Education with guidance concerning the implementation of the student achievement and statewide assessment program specified in §122(b)(4) of this title;
- (5) Decide, without expense to the parties concerned, certain types of controversies and disputes involving the administration of the public school system. The specific types of controversies and disputes appropriate for State Board resolution and the procedures for conducting hearings shall be established by rules and regulations pursuant to §121 (12) of this title;
- (6) Fix and establish the boundaries of school districts, which may be doubtful or in dispute, or change district boundaries as provided in §§1025, 1026, and 1027 of this title;
- (7) Decide on all controversies involving rules and regulations of local boards of education pursuant to §1058 of this title;
- (8) Subpoena witnesses and documents, administer and examine persons under oath, and appoint hearing officers as the State Board finds appropriate to conduct investigations and hearings pursuant to paragraphs (5), (6), and (7) of this subsection;
- (9) Review decisions of the Secretary of Education, upon application for review, where specific provisions of this title provide for such review. The State Board may reverse the decision of the Secretary only if it decides, after consulting with legal counsel to the Department, that the Secretary's decision was contrary to a specific state or federal law or regulation, was not supported by substantial evidence, or was arbitrary and capricious. In such cases, the State Board shall set forth in writing the legal basis for its conclusion;
- (10) Approve such Department rules and regulations as require State Board approval, pursuant to specific provisions of this title, before such regulations are implemented;
- (11) Approve rules and regulations governing institutions of postsecondary education that offer courses, programs of courses, or degrees within the State or by correspondence to residents of the State pursuant to §§121(16) and/or 122(b)(7-8).

- (12) Any provision of Chapter 5 of Title 14 to the contrary notwithstanding, decide appeals of decisions by the board of directors of a charter school to suspend or expel a student for disciplinary reasons. In deciding such cases, the State Board shall employ the same standard of review as is set forth in § 1058 of Title 14; and
- (13) Approve all regulations of the Higher Education Commission.

### **Conduct of Members**

**Delaware Code**, Title 29, Chapter 58 provides the laws regulating the conduct of officers and employees of the State of Delaware. Members of the State Board of Education are subject to certain of the provisions of that statute in that they are included in the definition of “state agency” 29 **Del.C.** §5804(40 11) and the definition of “honorary state official” 29 **Del.C.** §5804(43 6). For that reason, members of the Board are encouraged to become familiar with the provisions of that chapter. The following issues are of particular concern.

#### **Conflicts of Interest**

Section 5805 details the State’s conflict of interest provisions, which apply to members of the State Board of Education. As applied to State Board that means that a member may not participate on behalf of the State in the review or dispositions of any matter pending before the State in which he or she has a personal or private interest 29 **Del.C.** §5805(a). There are also restrictions on representing another’s interest §5805(b); against contracting with the State for goods or services §5805(c); or for representing or assisting private enterprise within two years after appointed service §5805(d). The code of conduct is further detailed in 29 **Del.C.** §5806.

#### **Financial Disclosure**

Subchapter II, Chapter 58, 29 **Del.C.**, contains the requirements for financial disclosure of public officers. Because State Board of Education members are not included in the definition of “public officer” contained in §5812, it would appear that members are not required to file the annual disclosure reports mandated by this statute. However, nothing would prohibit a member who chose to do so from voluntarily completing such a report.

#### **Dual Compensation**

“There are numerous elected state officials and other paid appointed officials who are also employed by state agencies, educational and other institutions, and other jurisdictions of government within the State” 29 **Del.C.** §5821(a). The statute prohibits such individuals from receiving dual compensation for their time. Thus, State Board members, who are employed by the agencies and organizations specified, are encouraged to acquaint themselves with the specific provisions of this statute.

## **Organization**

### **Officers**

#### **President**

The Governor shall name the President of the Board who shall serve at his/her pleasure 14 **Del.C.** §104(a). The President is responsible for the integrity of the Board process. Integrity includes the efficient, orderly deliberation of Board issues and conduct of Board affairs.

The President has no authority over Department of Education activities. However, the President does have authority, subject to any applicable Board policy, to (1) call special meetings of the Board; (2) represent, in person or through a designee, Board positions and symbolize the Board image in public and at ceremonial events; and (3) decide mechanics of Board procedures. Subject to Board approval, the President (1) determines Board agendas and committee charges, and (2) makes Board appointments to committees. The President shall be an ex officio member of all committees, and shall have all privileges of membership but shall not be counted in the committee quorum.

The President shall have the same right to make or second motions and to vote on pending questions as any other member of the Board.

The President shall determine the appropriate action to take in reference to any uncertainty regarding any expense statement submitted by a member of the State Board.

The President shall be responsible for initiating the annual evaluation of the Board's ~~progress toward achieving the goals delineated in the five-year plan (See Vision, Mission, and Goals)~~ vision, mission, and goals.

## **Vice President**

The Vice President shall be elected at the annual meeting and shall serve until the next annual meeting or until a successor has been named 14 **Del.C.** §105(a). The Vice President shall assist the President in the duties of the President's office, as the President may direct, and shall preside at meetings and appoint members of committees during the President's absence. In the event of the President's death, resignation, incapacity, or disqualification, the Vice President shall act in place of the President in all respects until the vacancy shall be filled or the incapacity removed.

## **Executive Secretary**

Pursuant to 14 **Del.C.** §104(c), the Secretary of Education, in addition to his or her other duties of office, shall serve as Executive Secretary of the State Board.

The Executive Secretary is responsible for keeping of the minutes and other official records of the State Board, either in person or by an assistant.

## **Legal Counsel**

Legal counsel to the State Board of Education is provided by the State Department of Justice and the Attorney General's Office in accordance with 29 **Del.C.** §2504. (In accordance with 29 **Del.C.** §2507, no agency board, or commission shall employ legal counsel except with approval of the Attorney General and Governor.)

## **Staff Assistance**

Section 104(c), 14 **Del.C.**, provides in part, that: "The Department, through the Secretary, shall provide reasonable staff support to assist the State Board in performing its duties pursuant to this title ...". In addition, the annual appropriations act provides funding for a single independent staff person to provide support and policy advice to the State Board of Education.

## **Committees**

### **Subcommittees of the Board**

The Board may, from time to time, establish temporary committees to help carry out its responsibilities. To preserve Board holism, committees will be used sparingly, only when other methods have been deemed inadequate or to improve efficiency of operations. Board committees, whether external or internal, may not speak for the Board. No more than three Board members may serve on a Board committee. Board members may express their interest and willingness to serve on any committee. Subject to Board approval, the President will identify the charge of the committee and appoint a committee chair and members of the committee. It is expected that committees will report back to the full Board on a regular basis.

### **Special Board Committees**

The Board may, from time to time, create special committees to advise the Board on specific issues, and shall vote to do so at a formal meeting of the Board. Such committees may include membership outside the Board or Department of Education.

### **Other Committees**

Under **Delaware Code**, a member of the State Board must serve on each of the following committees:

- President of the Board serves as co-chair of the P-20 Council 14 **Del.C.** §107
- Equalization Committee 14 **Del.C.** §1707(i)
- President of the State Board serves ex-officio on the Board of Trustees of the University of Delaware 14 **Del.C.** §5105

Traditionally, Board members also serve on numerous external boards and committees at both the State and national level. Examples include the following:

- Delaware School Boards Association Board of Directors
- Delaware School Boards Association Legislative Committee
- Education Consortium

- Committees and study groups of the National Association of State Boards of Education
- Education Task Forces and Committees established by Executive Orders and Legislation.

**Committees Appointed by the Secretary of Education**

In accordance with 14 **Del.C.** §103(a)(11), the Secretary must consult with the State Board of Education in the appointment of committees formed to assist in developing policies or regulations which would require State Board approval. The Board's view shall be expressed in the form of a vote on the proposed committee membership.

**New State Board Member Orientation**

The State Board of Education is responsible for the orientation of new members to the State Board. A subcommittee of the Board shall be responsible for planning the orientation of new members. The Secretary of Education shall be an ex-officio member of this committee.

**Board Member Development**

The State Board of Education shall be responsible for its own development as a Board. This development shall take place through membership and participation in organizations such as the National Association of State Boards of Education, Delaware School Boards Association, the National School Boards Association, and other activities such as Board retreats, conferences, conventions, workshops, or committees.

**Evaluation**

The Board will monitor its own process and performance to ensure continuity of Board improvements, integrity of Board actions and progress toward Board goals. The Board will be accountable to the public for competent, conscientious, and effective accomplishment of its obligations as a Board. The Board may seek the input from others regarding the effectiveness or impact of Board initiatives as part of the evaluation process, and may utilize the services of an independent consultant in doing so.

**Consultants**

The Board may, within available financial resources, hire consultants as needed. The Board shall formally approve the consultant and fee.

**Board Member Reimbursements**

Reimbursement to Board members for the normal mileage and incidental expenses are paid by the Department of Education from funds appropriated to the Board and budgeted for that purpose. Reimbursement requests for expenses for conferences or meetings outside the state must be initialed by the Board president. For other expenditures in excess of \$1,000, Board approval is required.

**Board Member Conference Attendance**

Conferences attended by Board members should focus on policy level decisions or provide information to inform policy makers. Content must be aligned to Board goals and initiatives. Conference attendance should be shared by all board members to the extent possible and must be approved by the President before any arrangements are made.

**Meetings****Annual Meeting**

Pursuant to 14 **Del.C.** §105(a), the annual meeting of the State Board of Education shall be held in Dover during the month of July. Election of the Vice President of the Board shall occur at this meeting.

**Regular Meetings**

Regular meetings of the State Board of Education are held once a month in the Cabinet Room of the John G. Townsend Building, Dover. The meetings are normally scheduled on the third Thursday of each month beginning at 1:00 p.m. but may vary as need dictates.

## Special Meetings

Special meetings of the State Board of Education may be held to address emergency issues, conduct hearings, develop goals, evaluate board operations, or for in depth study and review of an issue. Special meetings are held at a time and place agreed upon by the Board.

## Executive Sessions

The State Board of Education may meet in executive session for the reasons specified in 29 **Del.C.** §10004. The Board must vote in a public meeting to go into executive session stating the purpose for the executive session.

## Board Meeting Procedures

### Public Notice of Meetings

As specified in 29 **Del.C.** §10004(e)(4 2) the State Board is required to give public notice of all meetings, including executive sessions closed to the public, at least 7 days prior to the meeting. The notice must include the agenda and the date, time, and place of the meeting. The notice is posted on the bulletin board outside the Cabinet Room of the Townsend Building, Dover.

In addition, notices of all regular meetings are mailed to the district superintendents, state officials, the media, heads of state education organizations and other interested parties. Persons and organizations may request that they be placed on the mailing list by contacting Dani Moore at the Department of Education. Telephone 302/739-4603 ~~735-4010~~. Fax 302/739-7768. Email: [dmoore@doe.k12.de.us](mailto:dmoore@doe.k12.de.us)

### Agenda Format - Order of Business

The order of business for regular meetings is as follows:

- I. Opening
  - A. Call to Order
  - B. Approval of Agenda
  - C. Approval of Minutes
- II. Formal Public Comment
- III. State Board Business
  - A. Reports/Discussions
  - B. Budget Items
  - C. Other
- IV. Presentations
  - A. State Board of Education
  - B. Department of Education
  - C. Other Presentations
  - D. Secretary's Report, Review and Discussion
- V. Action Items
  - A. Department of Education
  - B. Professional Standards Board
  - C. Charter Schools
  - D. Other Action Items
  - E. Appeals and Reviews
- VI. Information Items

### Agenda Preparation and Dissemination

Items included on the Board's agenda for regular meetings are recommended jointly by the Policy Analyst to the State Board and the Cabinet of the Department of Education. The final agenda is subject to the approval of the Board President. Any member of the Board may request that an item be placed on the agenda.

Agendas with all background materials are distributed to Board members at least 5 days prior to the

meeting. Board agendas are also distributed to district and state officials and to others on a request basis.

The State Board Agenda is also posted on the Department of Education Web Site prior to the meeting at [www.doe.k12.de.us](http://www.doe.k12.de.us)

### **Rules of Order**

The Board uses the rules of parliamentary procedure to conduct its meetings, but it is not strictly bound by Robert's Rules of Order. The general conduct of the meeting is determined by the Board President with input from other board members and advice from the Board's legal counsel.

### **Quorum**

Four (4) members of the State Board must be present to conduct the business of the Board 14 **Del.C.** §105(a)).

### **Voting Method**

Votes by the State Board are taken by voice. When the vote is not a unanimous one, a roll call vote is taken in alphabetical order with the President voting last. All questions before the Board must be approved by a majority (4) of the members of the whole Board.

### **Minutes**

As prescribed in 29 **Del.C.** §10004(f), the State Board maintains minutes of all its meetings including executive sessions. The minutes must include the names of board members present and a record, by individual member, of all votes taken and action agreed upon. The minutes, along with the printed agenda and its backup materials, shall constitute the official record of the Board.

Highlights of the State Board meetings are available on the Department of Education Website within 10 days of the State Board meeting at [www.doe.k12.de.us](http://www.doe.k12.de.us). Official Board Minutes are posted on the web site within five days of their approval at the subsequent monthly meeting of the Board.

### **Public Participation at Board Meetings**

There are three ways that individuals and groups may address the Board at its regular meetings:

- An individual or group may request time on the Board's agenda to make a formal presentation to the Board. Such a request should be in writing, and be submitted to the President of the State Board of Education, John G. Townsend Building, 401 Federal Street, Suite 2, P.O. Box 1402, Dover, DE 19903-1402, at least 20 days prior to the meeting. The decision to include the presentation will be made by the Board President. (Such presentations are included in Section IV.C. of the agenda.)
- Time will be allocated at the beginning of the meeting (Section II) for individuals or groups to address the State Board on general issues. In addition, individual and/or groups may address the State Board on agenda items at the time that they are before the Board for discussion. Persons wishing to make comments should sign up on the appropriate form at least 15 minutes prior to the call to order. Each group should choose one representative to speak and comments should be limited to five minutes. Speakers will be recognized by the Board President in the order their names appear. If a large number of people sign up to speak, the Board President may at his/her discretion, limit the number of persons allowed to speak as well as designate the appropriate time for comments.

Normally the Board will not respond to questions or comments at the meeting but ~~will~~ may respond in writing to each person or group. Written responses will not be made to persons/groups addressing action items on the agenda.

### **Appeals and Reviews**

The State Board of Education has several responsibilities under the Code to hear appeals and to review decisions of the Secretary of Education. Those responsibilities are outlined in 14 **Del.C.** §104(b)(5), (b)(6), (b)(7), ~~and~~ (b)(9), and (b)(12). The types of controversies and disputes appropriate for Board resolution and the procedures for conducting such hearings are contained in Appendix B.

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## Policy Development

One of the primary functions of the State Board of Education is to assist the Secretary of Education in the development of policy. Subsection 104(b)(1), 14 **Delaware Code** states:

(1) Provide the Secretary of Education with advice and guidance with respect to the development of policy in those areas of education policy where rule- and regulation-making authority is entrusted jointly to the Secretary and the State Board. The State Board shall also provide guidance on new initiatives, which may from time to time be proposed by the Secretary. The Secretary shall consult with the State Board regularly on such issues to ensure that policy development benefits from the breadth of viewpoint and the stability which a citizens' board can offer and to ensure that rules and regulations presented to the State Board for its approval are developed with input from the State Board. Consistent with its role in shaping critical educational policies, the State Board of Education may also recommend that the Secretary undertake certain initiatives which the State Board believes would improve public education in Delaware;

In order to meet that responsibility, the State Board has set aside time at each regular meeting for discussions of State Board initiatives (Section III.A.), presentations from the Department of Education and the Secretary of Education's Report (Sections IV A. and B., respectively) and for Board action on policy, rules, and regulations (Section V.).

It is the expectation of the Board that the Secretary and the Department of Education will use those opportunities to obtain advice and counsel from the board as a whole in keeping with the spirit of the statute quoted above.

### Appendix A

The following is a list of the powers, duties, and responsibilities of the State Board of Education. Each pertinent section of the Code is paraphrased and annotated. A general description of the powers, duties, and responsibilities can also be found in 14 **Delaware Code**, §104(b), which is quoted in its entirety in the body of this document.

#### Advisory Board to the Secretary

The State Board shall participate in meetings of the Advisory Board to the Secretary of Education 14 **Del.C.** §106.

#### Alternative Assessments

The State Board of Education must approve any alternative assessment administered pursuant to §151(i) of Title 14 **Del.C.**

#### Approval of Charter Schools

The State Board of Education must approve charter schools authorized by the Department 14 **Del.C.** §503, ~~§506(a)(3)(c)~~, and §511(c). The State Board is also involved in any charter revocation under 14 **Del.C.** §515 and §516.

#### Approval of Rules and Regulations of the Professional Standards Board

The State Board of Education must approve rules and regulations promulgated by the Professional Standards Board before they become effective 14 **Del.C.** §1203. Such rules and regulations cover a number of areas including the following:

1. Qualifications and certification of educators in the public schools 14 **Del.C.** §1092, §1201, ~~§1230~~, §1260, §1261, and §1264(b), ~~and §3310(4)~~.
2. ~~Licensure of substitute teachers 14 **Del.C.** §1230~~
- 3-2. Establishment of a special institute for teacher certification 14 **Del.C.** ~~§1250-1260~~.
- 4-3. Regarding alternative routes for teacher certification 14 **Del.C.** ~~§1230-1260~~.
- 5-4. Regarding professional development activities that qualify for Skills and Knowledge Salary Supplements 14 **Del.C.** §1305(~~k~~ l).
- 6-5. Regarding authorization of stipends for employees who have achieved certification from

the National Board for Professional Teaching Standards or an equivalent program 14 ~~Del.C. §1305(m-l)~~  
~~7-6.~~ Regarding activities that qualify for Additional Responsibility Salary Supplements 14 ~~Del.C. §1305(m n)~~.

### Approval of Regulations of the Higher Education Commission

The State Board of Education must approve rules and regulations promulgated by the Higher Education Commission before they become effective 14 ~~Del.C. §104(b)~~ (13).

### Approval of Rules and Regulations

The State Board of Education must approve rules and regulations promulgated by the Department of Education before they become effective. Such rules and regulations cover a number of areas including the following:

1. Issuance of certificates and diplomas for the public schools 14 ~~Del.C. §122(b)(3)~~.
2. Statewide assessment of student achievement and the assessment of the educational attainments of the public school system 14 ~~Del.C. 151(i)~~.
3. Minimum courses of study for all public elementary schools and public high schools 14 ~~Del.C. §122(b)(5)~~.
4. Instruction in driver education in the nonpublic high schools 14 ~~Del.C. §122(b)(4-14)~~.
5. Issuance of Delaware Public Education Profiles on all public schools, including charter schools 14 ~~Del.C. §124(a) A.~~
6. Delaware performance Appraisal System II 14 ~~Del.C. §1270~~.
7. Excusal of educational hour requirements specified in 14 ~~Del.C. §122 (b)(8-9)~~ and §1049(1).
8. Enforcement of school attendance laws 14 ~~Del.C. §122(b)(9-10)~~ and 14 ~~Del.C. §2705(b)~~ and truancy 10 ~~Del. C. §901(14)~~.
9. Instruction in driver education during summer months 14 ~~Del.C. §122(b)(4-14)~~.
10. Conduct of interscholastic athletics 14 ~~Del.C. §122(b)(4-15)~~.
11. Mandatory drug and alcohol educational programs 14 ~~Del.C. §122(b)(4-17)~~.
12. Operation of adult education and family literacy programs 14 ~~Del.C. §122(b)(4-18)~~.
13. Conduct of the teacher scholarship loan program in critical curriculum areas 14 ~~Del.C. §1106~~ and the student loan program in critical curriculum areas (14 ~~Del.C. §1108~~).
14. Concerning the employment of school principals 14 ~~Del.C. §1307(2)~~.
15. Regarding the employment of school nurses 14 ~~Del.C. §1310(b)~~.
16. Concerning parent advisory committees, a peer review committee, a human rights committee, and an autistic program monitoring board 14 ~~Del.C. §1332(f)~~.
17. Relating to related services for children with disabilities 14 ~~Del.C. §1716A(c)~~ and §1716A(d).
18. ~~Governing the design and operation of school buses 14 Del.C. §2901, and the transportation of students of nonpublic nonprofit schools 14 Del.C. §2905.~~
19. ~~18.~~ Regarding the creation and operation of programs designed to serve exceptional students, primarily children with disabilities (numerous citations throughout 14 ~~Del.C. Chapter 31~~).
20. ~~19.~~ Regarding the extent and content of the instruction in the public schools in the Constitution of the United States, the Constitution and government of Delaware and the free enterprise system 14 ~~Del.C. §4103~~.
21. ~~20.~~ Regarding interstate agreements on the qualifications of education personnel 14 ~~Del.C. §8212~~.

### Approval of Shared School Decision Making Grants

The State Board of Education must approve guidelines for district transition grants for shared decision making 14 ~~Del.C. §803(b)~~; must approve guidelines for school transition grants 14 ~~Del.C. §805(b)~~; and must approve guidelines for school improvement grants 14 ~~Del.C. §806(a)~~.

### Approval of Vocational Centers

The State Board of Education must approve the creation of vocational-technical centers or schools 14 ~~Del.C. §205~~.

## **Approval of Neighborhood School Plans**

The State Board of Education must approve neighborhood school plans submitted by districts 14 Del.C. ~~§205-223(d)~~.

## **Committee Appointments**

The Secretary of Education must consult with the State Board of Education in the appointment of committees formed to assist in developing policies or regulations which would require State Board approval 14 Del.C. §103(a)(11).

## **Critical Curriculum Areas**

The State Board of Education must approve areas, which are to be designated as critical curriculum areas 14 Del.C. §1101; approve academic year programs 14 Del.C. §1104; and approve summer in-service programs 14 Del.C. §1105.

## **Deciding Certain Controversies**

The State Board of Education shall decide without expense to the parties concerned certain controversies and disputes involving the administration of the public school system 14 Del.C. §121(12) and 14 Del.C. §104(b)(5). Rules and regulations regarding such hearings by the Board are contained in Appendix B.

## **Deciding Controversies Concerning Local Rules and Regulations**

The State Board of Education shall decide controversies involving rules and regulations of local school boards 14 Del.C. §1058 and some rules and regulations of charter schools 14 Del.C. §104b(12).

## **Drug/Alcohol Education Programs**

The State Board of Education must approve of statewide alcohol/substance abuse programs established and implemented by the Department of Education 14 Del.C. §4116(a).

## **Employment of Aides in Autistic Program**

The State Board of Education may review decisions of the Department and Secretary of Education regarding requests to employ aides in lieu of teachers in the autistic program 14 Del.C. §1332(e).

## **Establishment of Programs for Children with Disabilities**

The State Board of Education must approve the establishment of schools, classes or programs for the disabled 14 Del.C. §203, §1703(d), §1703(k), §1703(l), §1703(m), §1703(n) and §1721.

## **Number and Length of School Days**

The State Board of Education must approve a reduction in the number of school hours and the length of full workdays for employees of the school system 14 Del.C. 1305(h)(i) (j).

## **Reorganization of School Districts**

The State Board of Education determines and establishes appropriate reorganized school districts through consolidation, division, or a combination of the two as well as establishing tax rates and tax districts for the same. 14 Del.C. §1025, §1026, §1027, §1028, §1065, §1924, and §1925

## **Review of Decisions Regarding Children with Disabilities**

The State Board of Education may review a variety of decisions made by the Department regarding services to children with disabilities (numerous citations in 14 Del.C. Chapter 31).

## **Standards for Interpreter/Tutors**

The State Board of Education must approve standards prescribed for interpreter/tutors 14 Del.C. §1331(b).

## **Statewide Programs for Children with Disabilities**

The State Board of Education must approve the designation of a district to serve as administrative agency for the deaf-blind program 14 Del.C. §1321(e)(15)a.; to administer a program for the physically impaired 14 Del.C.

§1321(e)(16); the establishment of intensive learning centers 14 **Del.C.** §1321(e)(17); and the designation of an administering district for the autistic program 14 **Del.C.** §1332(a).

#### **Use of Cash Options in Lieu of Salary Funds**

The State Board of Education may review decisions of the Department and Secretary of Education regarding district requests to elect cash options in lieu of receiving salary funds from the State 14 **Del.C.** §1321(e)(11), §1321(e)(12), §1321(e)(15)b., §1321(e)(16), §1332(d), and §1332(e).

#### **Use of Special Education Funds**

The State Board of Education may review decisions on the use of special education funds that a district seeks to use in another way if an objection is made to the Department's decision 14 **Del.C.** §1703(o) and §1716A(h).

#### **Vacancies on Local School Boards**

The State Board of Education appoints interim members to a local board of education in the event a majority or the entire membership vacates the seats at the same time. The Board may also set the date for a special election to fill the vacancies 14 **Del.C.** §1054.

#### **Waiver of a Regulation**

The State Board may, within 30 days or at its next meeting, deny any waiver of a regulation, it must promulgate or approve, granted by the Department of Education 14 **Del.C.** §122(g)(2).

#### **Waiver of Rules Under School Discipline Programs**

The Department of Education is authorized to waive certain rules and regulations in the implementation of school discipline programs. The State Board of Education may deny the waiver within a fixed period of time 14 **Del.C.** §1606.

## **Appendix B**

### **HEARING PROCEDURES AND RULES**

RULE MAKING HISTORY: Initial adoption date September 1998  
 Revised 2000  
 Revised date 10-1-01 (see Register of Regulations at [www.legis.state.de.us/onlinepublications](http://www.legis.state.de.us/onlinepublications))  
 Revised date 11-1-04 (see Register of Regulations at [www.legis.state.de.us/onlinepublications](http://www.legis.state.de.us/onlinepublications))  
Revised date 10-23-08

#### **1.0 Scope and Purpose of Rules**

The State Board of Education ("the State Board") is authorized by several sections of the Education Code (Title 14 of the **Delaware Code**) to adopt or approve rules and regulations, resolve disputes, hear appeals, and review decisions of the Secretary of Education. The State Board is also governed by the Administrative Procedures Act (Chapter 101 of Title 29 of the **Delaware Code**), except where specifically exempted by other law.

These Hearing Procedures and Rules ("Rules") shall govern the practice and procedure before the State Board in hearings, appeals, and regulatory proceedings.

#### **2.0 General Provisions**

2.1 These Rules shall be liberally construed to secure a just, economical, and reasonably expeditious determination of the issues presented in accordance with the State Board's statutory responsibilities and with the Administrative Procedures Act.

2.2 The State Board may for good cause, and to the extent consistent with law, waive any of these

Rules, either upon application or upon its own motion.

2.3 Whether a proceeding constitutes an evidentiary hearing, an appeal or regulatory action shall be decided by the State Board on the basis of the applicable laws. A party's designation of the proceeding shall not be controlling on the State Board or binding on the party.

2.4 The State Board may appoint a representative to act as a hearing officer for any proceeding before the State Board. Except as otherwise specifically provided, the duties imposed, and the authority provided, to the State Board by these Rules shall also extend to its hearing officers.

2.5 Notwithstanding any part of these Rules to the contrary, the State Board, or its counsel, designee or hearing officer, may conduct pre-hearing conferences and teleconferences to clarify issues, confer interim relief, specify procedures, limit the time available to present evidence and argument, and otherwise expedite the proceedings.

2.6 The State Board may administer oaths, issue subpoenas, take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.

2.7 The State Board may elect to conduct joint hearings with the Department of Education and other state and local agencies. These Rules may be modified as necessary for joint hearings.

2.8 Any party to a proceeding before the State Board may be represented by counsel. An attorney representing a party in a proceeding before the State Board shall notify the Executive Secretary of the State Board ("Executive Secretary") of the representation in writing as soon as practical. Attorneys who are not members of the Delaware Bar may be permitted to appear *pro hac vice* before the State Board in accordance with Rule 72 of the Rules of the Delaware Supreme Court.

2.9 The State Board may continue, adjourn or postpone proceedings for good cause at the request of a party or on its own initiative. Absent a showing of exceptional circumstances, requests for postponements of any matter scheduled to be heard by the State Board shall be submitted to the Executive Secretary in writing at least three (3) business days before the date scheduled for the proceeding. The President of the State Board shall then decide whether to grant or deny the request for postponement. If a hearing officer has been appointed, the request for postponement shall be submitted to the hearing officer, who shall then decide whether to grant or deny the request.

2.10 A copy of any document filed with or submitted to the State Board or its hearing officer shall be provided to all other parties to the proceeding, or to their legal counsel. Where a local or other school board participates in a proceeding, copies of filed documents shall be directed to the executive secretary of the board, unless that board appoints a different representative for such purpose.

2.11 For purposes of these Rules, unless otherwise specified "day" shall mean a calendar day. "Business day" shall mean weekdays Monday through Friday, except when those days fall on a legal holiday.

### 3.0 De Novo and Other Evidentiary Hearings

3.1 Section 3.0 governs proceedings where a statute or regulation provides the right to an original or to a de novo hearing before the State Board to decide a specific controversy or dispute.

#### 3.2 Petitions for Hearing

3.2.1 A party may initiate a hearing on matters within the State Board's jurisdiction by mailing or delivering a petition for hearing to the Executive Secretary. The petition shall be in writing and shall be signed by the party making the request (or by the party's authorized representative). It shall set forth the grounds for the action in reasonable detail and shall identify the source of the State Board's authority to decide the matter. Petitions may ~~not~~ be delivered to the Executive Secretary by facsimile, but not by E-mail or other electronic means.

3.2.2 The petition for hearing shall be filed within a reasonable time after the controversy arises, but in no event shall a petition be filed more than thirty (30) days after the petitioning party's receipt of notice that official action has been taken by an authorized person, organization, board or agency.

3.2.3 A copy of the petition for hearing shall be delivered to all other parties to the proceeding at the time it is sent to the Executive Secretary. A copy of any other paper or document filed with the State Board or its hearing officer shall, at the time of filing, also be provided to all other parties to the proceeding. If a party is represented by legal counsel, delivery to legal counsel is sufficient.

3.2.4 Upon receipt of an adequately detailed petition for hearing, the Executive Secretary shall place the matter on the agenda of the next State Board meeting. At the next meeting, the State Board will either assign the matter to a hearing officer or determine a hearing date for the matter. The parties shall be given at least twenty (20) days notice of the hearing date.

3.2.5 A party shall be deemed to have consented to an informal hearing (as that term is used in Section 10123 of the Administrative Procedures Act) unless the party notifies the Executive Secretary in writing that a formal public hearing is required. Such notice must be delivered to the Executive Secretary within three (3) days of the receipt of the notice scheduling the hearing.

3.3 Record of Prior Proceedings

3.3.1 If proceedings were previously held on the matters complained of in the petition, the agency which conducted those proceedings shall file a certified copy of the record of the proceedings with the Executive Secretary.

3.3.2 The record shall contain any written decision, a certified copy of any rule or regulation involved, any minutes of the meeting(s) at which a disputed action was taken, a certified, verbatim transcript of the proceedings conducted by the agency below and all exhibits presented to the agency. The certified transcript shall be prepared at the direction and expense of the agency below.

3.3.3 The record shall be filed with the Executive Secretary within ten (10) days of the date the Executive Secretary notifies the agency that the petition has been filed, unless directed otherwise. A copy of the record shall be sent to the petitioner when it is submitted to the Executive Secretary.

3.4 Record Review

3.4.1 If a hearing was previously held on the matters complained of in the petition, the parties to the proceeding before the State Board may agree to submit the matter to the State Board or its hearing officer on the existing record without the presentation of additional evidence.

3.4.2 If the parties agree to submit the matter for decision on the existing record, they shall support their positions in written statements limited to matters in the existing record. The parties' written statements shall be submitted according to a schedule determined by the State Board.

3.4.3 If the parties agree to submit the matter for decision on the existing record, they may nonetheless request oral argument by notifying the Executive Secretary in writing at least ten (10) days before the date written statements are due. Oral argument shall be limited to the matters raised in the written statements and shall be limited to fifteen (15) minutes per side with an additional five (5) minutes for rebuttal.

3.4.4 If the parties agree to submit the matter for decision on the existing record, the State Board's decision shall be based on the existing record, the written statements and oral argument, if any.

3.5 Evidentiary hearings

3.5.1 Evidentiary hearings will be held when there has not been a prior hearing, when the parties do not agree to rest on the existing record, or when the State Board or its hearing officer otherwise decide to receive additional evidence.

3.5.2 The hearing will proceed with the petitioner first presenting its evidence and case. The responding party may then present its case. The petitioner will then have an opportunity to present rebuttal evidence.

3.5.3 Opening and closing arguments and post hearing submissions of briefs or legal memoranda will be permitted in the discretion of the State Board or hearing officer.

3.5.4 Any person who testifies as a witness shall also be subject to cross examination by the other parties to the proceeding. Any witness is also subject to examination by the State Board or its hearing officer.

3.6 Evidence

3.6.1 Strict rules of evidence shall not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.

3.6.2 The State Board or its hearing officer may exclude evidence and limit testimony as provided in Section 10125(b) of the Administrative Procedures Act.

3.6.3 Objections to the admission of evidence shall be brief and shall state the grounds for the objection. Objections to the form of the question will not be considered.

3.6.4 Any document introduced into evidence at the hearing shall be marked by the State Board or the hearing officer and shall be made a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties and to each of the State Board members present for the hearing unless otherwise directed.

3.6.5 Requests for subpoenas for witnesses or other sources of evidence shall be delivered to the Executive Secretary in writing at least fifteen (15) days before the date of the hearing, unless additional time is allowed for good cause. The party requesting the subpoena is responsible for delivering it to the person to whom it is directed.

## 3.7 Creation of Record before State Board

3.7.1 Any party may request the presence of a stenographic reporter on notice to the Executive Secretary at least ten (10) days prior to the date of the hearing or oral argument. The requesting party shall be liable for the expense of the reporter and of any transcript the party requests.

3.7.2 If a stenographic reporter is not present at the hearing or argument, the State Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the hearing.

## 3.8 State Board Decision

3.8.1 When the State Board has appointed a hearing officer, the hearing officer shall submit a proposed written decision for the consideration of the State Board.

3.8.2 The proposed decision shall comply with Section 10126(a) of the Administrative Procedures Act. The proposed decision shall be submitted to the State Board and the parties within a reasonable time of the conclusion of the proceedings before the hearing officer.

3.8.3 The parties shall have twenty (20) days from the date the proposed order is delivered to them to submit in writing to the State Board and the other party any exceptions, comments and arguments respecting the proposed order.

3.8.4 To the extent possible, the State Board shall consider a matter conducted by a hearing officer at its next regular meeting following the parties' submissions, if any, or the end of the comment period, whichever comes first.

3.8.5 The State Board shall consider the entire record of the case and the hearing officer's proposed decision and written comments thereto, if any, in reaching its final decision. The State Board's decision shall be incorporated in a final order which shall be signed and mailed to the parties.

## 4.0 Appeals

4.1 Section 4.0 governs proceedings where a statute or regulation provides the right to appeal to the State Board a decision which resolved a specific controversy or dispute. These proceedings include, but are not limited to, appeals of school district decisions involving rules and regulations of the school board (14 Del.C. §1054 <sup>1</sup> 1058) and appeals of decisions of the Delaware Interscholastic Athletic Association (DIAA) (14 Del.C. §312) and appeals of decisions by the board of directors of a charter school to suspend or expel a student for disciplinary reasons (14 Del.C. §104(b)(12)).

Note: The State Board of Education has held that the local boards of education are not subject to the *Administrative procedures Act* while conducting disciplinary proceedings. See *R.T. v. Sussex County Vocational-Technical School District Board of Education*, SBE No.99-12 (February 17, 2000) and *M.B. v. Sussex Technical School District Board of Education*, SBE No.-03 (April 3, 2000)

### 4.2 For purposes of Section 4.0:

4.2.1 "Party" shall mean any person or organization who participated in the proceedings before the agency which rendered the decision being appealed.

4.2.2 "Decision" shall mean the official action taken to resolve the dispute presented below and shall include the factual findings, the rule involved and the agency's conclusion. "Decision" shall not include policy making or the adoption of rules and regulations of future applicability.

4.3 For purposes of determining the State Board's jurisdiction under Section 1058 of the Education Code, "controversies involving the rules and regulations of the school board" shall mean the presentation before the local school board of a dispute involving the application of rules and regulations of the local board in a particular factual context. Certain decisions involving the application of rules and regulations of the local board may not be appealed to the State Board, including:

4.3.1 Decisions involving student disciplinary actions where a student is suspended from school for ten (10) or fewer days, except where a request to expunge the disciplinary action from the student's record has been denied by the local board.

4.3.2 Personnel actions which are covered under a collective bargaining agreement or are otherwise subject to adjudication by the Public Employment Relations Board.

4.3.3 Termination of employees conducted in accordance with Chapter 14 of the Education Code.

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## GENERAL NOTICES

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4.3.4 Termination or non-renewal of public school administrators and confidential employees, as those terms are defined in Section 4002 of the Education Code, at the conclusion of an employment contract.

4.4 Decisions for the Board of Directors of a charter school to suspend a student from school for ten (10) or fewer days may not be appealed to the State Board, except where a request to expunge the disciplinary action from the student's record has been denied by the board of directors.

### 4.5 Notice of appeal

4.5.1 A party may initiate an appeal by mailing or delivering a notice of appeal to the Executive Secretary. The notice shall be in writing, shall be signed by the party making the request (or by the party's authorized representative. Notices of Appeal may ~~not~~ be delivered to the Executive secretary by facsimile, but not by E-mail or other electronic means.

4.5.2 The notice of appeal shall briefly state the decision from which the appeal is taken, the law, rule or regulation involved in the decision, the names of the parties, and the grounds for the appeal.

4.5.3 A notice of appeal form is included at the end of these Rules. People filing appeals are not required to use the form, but may find it helpful to do so.

4.5.4 The notice of appeal must be postmarked by or delivered to the Executive Secretary within thirty (30) days of the day the party initiating the appeal receives the written decision from which the appeal is taken.

4.5.5 A copy of the notice of appeal shall be mailed or delivered to the agency which made the decision at the same time the original notice of appeal is mailed or delivered to the Executive Secretary. A copy of any other paper or document filed with the State Board or its hearing officer shall be provided to all parties to the proceeding at the same time it is filed with the State Board or its hearing officer.

4.5.6 Upon receipt of an adequately detailed notice of appeal involving a student disciplinary decision or a decision of the Delaware Interscholastic Athletic Association (DIAA), the Executive Secretary shall assign the matter to a hearing officer from a roster of hearing officers approved by the State Board. The Executive Secretary shall provide the notice of appeal and the hearing officer assignment to the State Board at its next meeting.

4.5.7 Upon receipt of an adequately detailed notice of appeal involving any matter other than a student disciplinary decision or a decision of DIAA, the Executive Secretary shall consult with the President of the State Board to determine whether the matter should be assigned to a hearing officer or placed on the State Board's next meeting agenda. The President shall have the authority to authorize the Executive Secretary to assign a hearing officer to the matter from a roster of hearing officers approved by the State Board. In such case, the Executive Secretary shall provide the notice of appeal and the hearing officer assignment to the State Board at its next meeting. Nothing in this subsection shall prevent the State Board from later assigning the matter to a hearing officer.

### 4.6 The record on appeal

4.6.1 Unless instructed otherwise, within ten (10) days of the receipt of the notice of appeal, the agency which made the decision under appeal shall forward the record of the proceedings below to the Executive Secretary. A copy of the record shall be sent to the party filing the appeal at the same time.

4.6.2 The record shall include the agency's written decision, a copy of any rule or regulation involved, the minutes of the meeting(s) at which the decision was made, a verbatim transcript of the hearing conducted by the agency or party below, and all exhibits presented to the agency. The transcript shall be prepared at the direction and expense of the agency below.

4.6.3 The agency's executive secretary, executive director or comparable administrator shall complete the "Certification of Record" form provided at the end of these Rules and attach it to the record when the record is forwarded to the Executive Secretary.

4.6.4 If a transcript of the proceedings below is not or cannot be provided to the State Board, the Executive Secretary shall remand the case to the agency with an instruction that the agency hold a new hearing within ten (10) days.

### 4.7 Proceedings on appeal

4.7.1 The State Board of Education or its hearing officer shall establish and notify the parties of the date when the State Board or its hearing officer will consider the appeal, hereafter referred to as the consideration date. The parties shall be given at least twenty (20) days notice of the consideration date. The parties may agree to shorten or waive the notice of the consideration date.

4.7.2 Written position statements ~~of position~~ and legal briefs or memoranda, if any, shall be filed

no later than (10) days prior to the consideration date. A party who files a written position statement with the State Board or its hearing officer must send a copy to the opposing party at the same time. Failure to file a written statement by the time specified may result in a postponement of the consideration date until the statement is filed, or a consideration of the appeal without the written statement, at the discretion of the State Board or its hearing officer.

4.7.3 The written position statement must clearly identify the issues raised in the appeal. Briefs or legal memoranda shall be submitted with the written statement if the appeal concerns a legal issue or interpretation.

4.7.4 Oral argument

4.7.4.1 A party may request that oral argument be heard on the consideration date. A request for oral argument shall be submitted with the written position statement ~~of appeal~~. There will be no oral argument unless it is requested when the written position statement ~~of appeal~~ is submitted.

4.7.4.2 Oral argument, if requested, shall be limited to fifteen (15) minutes per side with five additional minutes for rebuttal.

4.7.4.3 Any party may request the presence of a stenographic reporter at oral argument by notifying the Executive Secretary at least ten (10) days prior to the date of the argument. The requesting party shall be liable for the expense of the reporter. If a stenographic reporter is not present at the argument, the State Board or hearing officer shall cause an electronic transcript of the hearing to be made by tape recorder or other suitable device. Electronic transcripts shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the appeal.

4.7.4.4 If the State Board or hearing officer permits a party to present oral argument on an issue which was not identified by the party in their written position statement, briefs or legal memoranda, or if in the course of the argument, the State Board or hearing officer raises an issue which was not previously raised by either party, the parties shall have a reasonable opportunity to comment in writing within five (5) business days of the oral argument.

4.7.4.5 The State Board or its hearing officer may limit or restrict argument that is irrelevant, insubstantial or unduly repetitive.

4.8 Standard and Scope of Review

4.8.1 The appellate review of the State Board shall be limited to the record of the proceedings below. Neither the State Board nor the hearing officer will consider testimony or evidence which is not in the record. If the State Board determines that the record is insufficient for its review, it shall remand the case to the agency below with instructions to supplement the record.

4.8.2 The standard of review shall be determined by the law creating the right of appeal. In the absence of a specific statutory standard, the substantial evidence rule will be applied, that is, neither the State Board nor the hearing officer will substitute its judgment for that of the agency below if there is substantial evidence in the record for its decision and the decision is not arbitrary or capricious. The State Board will make an independent judgment with respect to questions of law.

4.9 State Board Decision

4.9.1 After considering the record from the proceedings below, the written submissions and the arguments made by the parties, if any, the hearing officer shall submit a proposed written decision for the consideration of the State Board.

4.9.2 The proposed decision shall comply with Section 10126(a) of the Administrative Procedures Act. To the extent possible, ~~the~~ proposed decision shall be submitted to the State Board and the parties within fifteen (15) days of the consideration date or the filing of any post argument submissions.

4.9.3 The parties shall have twenty (20) days from the date the proposed order is delivered to them to submit in writing to the State Board and the other party any exceptions, comments and arguments respecting the proposed order. The parties may agree to shorten or waive the comment period, or to consent to the hearing officer's recommendation without additional comment. When the parties consent to the hearing officer's recommendation, they shall so advise the Executive Secretary.

4.9.4 The State Board shall consider the appeal at its next regular meeting following receipt of the parties' exceptions, comments, and arguments, if any, or the end of the comment period, whichever occurs first.

4.9.5 The State Board shall consider the entire record of the case and the hearing officer's proposed decision and any written comments thereto, in reaching its final decision. The State Board's decision

shall be incorporated in a final order which shall be signed and mailed to the parties.

#### 4.10 Student Discipline Appeals

4.10.1 To the extent possible, appeals of decisions involving student discipline will be scheduled for consideration by the hearing officer within thirty (30) days of the receipt of the notice of appeal.

4.10.2 If an appeal involves disciplinary action against a student receiving special education and related services, the record must include evidence that a Manifestation Determination Review was conducted pursuant to the Department of Education's ~~Administrative Manual for Special Education Services~~ regulations governing special education. Failure to provide such evidence may result in reversal or remand to agency for additional proceedings.

4.10.3 An appeal of or dispute about the Manifestation Determination Review must be made to the Department of Education as provided in the ~~Administrative Manual for Special Education Services~~ Department's regulations governing special education. The State Board of Education will not review such determinations.

### 5.0 Public Regulatory Hearings

5.1 Section 5.0 governs public hearings before the State Board or its hearing officers where the State Board is required to hold, or decides to hold, such hearings before adopting or approving rules and regulations or taking other regulatory action. See Note 1.

5.2 Notice that the State Board has scheduled a public regulatory hearing shall be provided as required in Section 10115 of the Administrative Procedures Act. Notice of the public hearing shall also be circulated to individuals and agencies on the State Board's mailing list for meeting agendas. The notice of the hearing shall indicate whether the State Board will conduct the hearing, or designate a hearing officer for that purpose.

#### 5.3 Creation of record of public hearing

5.3.1 Any party may request the presence of a stenographic reporter on notice to the Executive Secretary at least ten (10) days prior to the date of the hearing. The requesting party shall be liable for the expense of the reporter and of any transcript the party requests.

5.3.2 If a stenographic reporter is not present at the hearing, the State Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the hearing. Any party requesting that a written transcript be made from the recording shall bear the cost of producing the transcript.

#### 5.4 Subpoenas

5.4.1 The State Board or its hearing officer may issue subpoenas for witnesses or other evidence for the public hearing. Where possible, such subpoenas shall be delivered to the party to whom they are directed at least ten (10) days prior to the public hearing.

5.4.2 The State Board or its hearing officer may also, in its discretion, issue subpoenas at the request of a person interested in the proceedings. Requests for such subpoenas shall be delivered to the Executive Secretary at least fifteen (15) days prior to the date of the hearing, unless additional time is allowed for good cause.

5.4.3 The party requesting the subpoena is responsible for delivering it to the person to whom it is directed.

#### 5.5 Documents

5.5.1 The State Board or its hearing officer shall, at the beginning of the hearing, mark as exhibits any documents it has received from the public as comment and any other documents which it will consider in reaching its decision. Documents received during the hearing shall also be marked as exhibits.

5.5.2 Any person or party submitting a document before or during the public hearing shall provide at least eight (8) copies of the document to the State Board, unless directed otherwise.

#### 5.6 Witnesses

5.6.1 The order of witnesses appearing at the hearing shall be determined by the State Board or its hearing officer. The State Board or its hearing officer may direct an agency or organization to designate a single person to present the agency or organization's position at the public hearing.

5.6.2 The State Board or its hearing officer may limit a witness's testimony and the admission of other evidence to exclude irrelevant, insubstantial or unduly repetitious comment and information.

5.6.3 Any person who testifies at a public hearing shall be subject to examination by the State



# GENERAL NOTICES

## NOTICE OF APPEAL TO THE STATE BOARD OF EDUCATION

To: **Executive Secretary of the State Board of Education**

I, [name of person filing appeal] request that the State Board of Education accept this appeal and enter a decision and order as further explained in this Notice.

1. I am filing this Notice of Appeal on behalf of \_\_\_\_\_ *[myself or my child (give child's name)]*.

2. Please contact me at: [give address, telephone number(s) and email address if available]

3. I am appealing a decision made by \_\_\_\_\_ *[give name of agency]* on \_\_\_\_\_ *[date of written decision]*. I received the written decision on \_\_\_\_\_ *[date]*.

4. I believe the State Board may hear this appeal because it involves:

\_\_\_\_\_ A decision by a school district board of education that decided a controversy involving the district's rules and regulations (including disciplinary rules).

\_\_\_\_\_ A decision by the Delaware Interscholastic Athletic Association that decided a controversy involving athletic rules and regulations.

\_\_\_\_\_ A decision by the board of directors of a charter school to suspend or expel a student for disciplinary reasons.

\_\_\_\_\_ Other *(explain why the State Board of Education has authority to consider your appeal)*

5. I am appealing this decision because *(you may attach additional pages):*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. I want the State Board of Education to do the following:

\_\_\_\_\_  
\_\_\_\_\_

The information I have provided in this Notice of Appeal is true and correct to the best of my understanding and knowledge. I will send a copy of this Notice to the agency involved when I mail or deliver the Notice of Appeal to the State Board of Education.

I understand that appeals to the State Board of Education are decided "on the record" of the hearing that was held by the agency and that the State Board will not accept new testimony or other new evidence during this appeal.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Signed

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## Additional Instructions

1. Please print or type.
  2. Provide all of the information requested.
  3. Attach a copy of the written decision that you are appealing. The State Board of Education may not consider an appeal until a written decision has been issued.
  4. Keep a copy of this Notice for your use and reference.
  5. Mail, ~~fax~~, or deliver this Notice and any attachments to the Executive Secretary of the State Board of Education at ~~[add address]~~ 401 Federal Street, Suite 2, Dover, DE 19901; Facsimile No. (302) 739-7768.
  6. Send a copy of this Notice and any attachments to the agency involved at the same time you mail or deliver the Notice to the State Board of Education.
  7. The State Board of Education's *Hearing Procedures and Rules* are available at the State Board web page at [www.doe.k12.de.us](http://www.doe.k12.de.us) or by calling the State Board's offices at ~~302-739-4603~~ 735-4010. Rule 4 addresses appeals.
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**DELAWARE RIVER BASIN COMMISSION**  
**PUBLIC NOTICE**

The Delaware River Basin Commission will hold a public hearing and business meeting on Wednesday, December 10, 2008 beginning at 10:30 a.m. at the Commission's office building, 25 State Police Drive, West Trenton, New Jersey. For more information visit the DRBC web site at [www.drbc.net](http://www.drbc.net) or contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

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**DEPARTMENT OF AGRICULTURE**  
**HARNESS RACING COMMISSION**  
**PUBLIC NOTICE**

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rules 7 and 10. The Commission will hold a public hearing on the proposed rule changes on December 16, 2008. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on November 1, 2008.

The proposed changes are for the purpose of updating Rules 7 and 10 to reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) A copy is also available for inspection at the Harness Racing Commission office.

**PLEASE NOTE:** The date of the Public Hearing has been changed from December 9th to December 16th.

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**DEPARTMENT OF EDUCATION**  
**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, December 18, 2008 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES**  
**PUBLIC NOTICE****2100 Eligibility Criteria**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 29, 7903(10) and 7909A(e) of the Delaware Code, Delaware Health and Social Services (DHSS) / Division of Developmental Disabilities Services proposes to amend their criteria for establishing eligibility related to DDDS services.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Anderson, DDDS, 101 Boyd Boulevard, 26351 Patriot's Way, Georgetown, DE 19947, or by fax to (302) 934-8707 **Division of Developmental Disabilities Services Eligibility Criteria Regulation** by December 31, 2008.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

### PUBLIC NOTICE

#### 20700.6 Attendant Services Waiver

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Division of Social Services Manual (DSSM); specifically, repealing the rules of the Attendant Services Waiver Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by December 31, 2008.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

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## DIVISION OF SOCIAL SERVICES

### PUBLIC NOTICE

#### Court Appointed Special Advocate

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Court Appointed Special Advocate.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by December 31, 2008.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

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## DIVISION OF SOCIAL SERVICES

### PUBLIC NOTICE

#### FOOD SUPPLEMENT PROGRAM

##### *Countable Resources and Excluded Resources*

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding *Countable Resources and Excluded Resources*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program &

Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by December 31, 2008.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**2930 Council on Real Estate Appraisers**

**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §4006(a)(1), the Council on Real Estate Appraisers has proposed revisions to its rules and regulations.

A public hearing will be held on January 20, 2009 at 9:45 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Council on Real Estate Appraisers, 861 Silver Lake Boulevard, Dover, Delaware 11904. Persons wishing to submit written comments may forward these to the Council at the above address. The final date to receive written comments will be at the public hearing.

The Council proposes amendments to Rule 2.5, which addresses the Council's continuing education audit. The Council will audit a minimum of 25% of the licensees during each renewal period. In addition, Rule 2.5.4 is added to expressly give the Board authority to conduct hearings and impose the full range of sanctions available under 24 **Del.C.** §4016 when licensees fail to comply with continuing education requirements.

Several Rules concerning the specific continuing education requirements are also revised. Rule 2.5.4.2 is amended to state that, beginning on November 1, 2009, during each renewal period, all licensees must complete **three** hours of education on Delaware Law, Rules and Regulations. Currently, only two hours of education in this subject matter are required. Rule 2.5.10 is amended to clarify that the requirement that 14 hours of education per licensure period must be taken in a traditional classroom setting begins November 1, 2009. The provision that the seven hour USPAP update course must be taken in a classroom is stricken. Rule 2.5.11 is revised to state that all courses must be approved by the Council to qualify as continuing education.

Pursuant to the new Rule 2.5.13, a hardship provision is added, which will give the Council discretion to grant an extension for completion of continuing education in certain specified circumstances.

Finally, Rule 4.2.4 is amended for greater clarity. This Rule provides that, for a certain period of time, a licensee who has been sanctioned by the Council is prohibited from supervising trainees. The revisions clarify the parameters of this prohibition and add an exemption for licensees who were sanctioned prior to July 1, 2009.

The proposed amendments strengthen continuing education standards. Further, pursuant to the revisions, the Council will be given the authority to impose a full range of sanctions on licensees who do not comply with continuing education requirements. The Rule prohibiting licensees with disciplinary histories from supervising trainees is clarified. Therefore, the proposed revisions will serve to protect the public from unsafe practices and enhance practitioner competence.

The Council will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

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**DIVISION OF PROFESSIONAL REGULATION**  
**3300 Board of Veterinary Medicine**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §3306(a)(1), the Board of Veterinary Medicine has proposed revisions to its rules and regulations.

A public hearing will be held on January 13, 2009 at 1:15 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Veterinary Medicine, 861 Silver Lake Boulevard, Dover, Delaware 11904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board proposes amendments to Rules 9.0 and 14.0, which address continuing education requirements for veterinarians and veterinary technicians. Provisions are added which expressly give the Board authority to conduct hearings and impose sanctions regarding licensees' failure to comply with continuing education requirements. In addition, the proposed amendments provide for proration of continuing education requirements based on the period of licensure.

The Board proposes several revisions to Rule 11.0, concerning qualifications for licensure by examination as a veterinary technician. Rule 11.1.2 is amended to clarify that an applicant, who has not graduated from an AVMA-accredited program, may qualify to take the examination, based on educational and/or experiential alternatives, only until October 2013. Further, qualifying practical experience must be related to animal care and handling under the direct supervision of a licensed veterinarian.

Finally, the Board proposes revisions to correct various typographical errors.

The proposed amendments will expressly give the Board authority to sanction licensees who do not comply with continuing education requirements. The amendments also clarify the standards for licensure for veterinary technicians. Therefore, the proposed revisions will serve to protect the public from unsafe practices and enhance practitioner competence.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

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**DIVISION OF PROFESSIONAL REGULATION**  
**3900 Board of Clinical Social Work Examiners**  
**PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §3906(a)(1), the Board of Clinical Social Work Examiners has proposed revisions to its rules and regulations.

A public hearing will be held on January 5, 2009 at 9:15 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Clinical Social Work Examiners, 861 Silver Lake Boulevard, Dover, Delaware 11904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board proposes amendments to Rule 4.0, which addresses professional supervision. Section 3907(a)(1) of Title 24 of the Delaware Code provides that applicants for licensure must have experience "under professional supervision acceptable to the Board." Rule 4.0 is designed to clarify this statutory provision.

Rule 4.1, which specifically defines "professional supervision acceptable to the Board," is amended to provide clear and objective standards for a supervisory relationship. The revised Rule follows the principles set forth in the Association of Social Work Boards' Model Social Work Practice Act.

Rule 4.1.1 is added to address the circumstance where an applicant is unable to locate a licensed clinical social worker to provide supervision. The amendment requires the applicant to provide documentation that a licensed clinical social worker was, in fact, "not available."

Rule 4.2 is added to provide that applicants for licensure may not simultaneously supervise one another. This amendment will prohibit supervisory relationships that may be compromised by conflicts of interest. The amendments will strengthen and clarify the requirements for supervisory relationships. Therefore, the proposed revisions will serve to protect the public from unsafe practices and enhance practitioner competence.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

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**DEPARTMENT OF TRANSPORTATION**  
**Division of Motor Vehicles**  
**PUBLIC NOTICE**

The Delaware Division of Motor Vehicles gives notice of intent to adopt proposed Division of Motor Vehicles Regulation 2213, which replaces current Regulation 2213, relating to the issuance of non-commercial driver licenses and emergency vehicle operators documents. This regulation incorporates changes due to the passage of Senate Bill 208 during the 144<sup>th</sup> General Assembly.

Any person who wishes to make written suggestions, briefs or other written materials concerning this proposed regulation must submit the same to Scott Vien, Chief of Driver Services, Delaware Division of Motor Vehicles, P.O. Box 698, Dover, Delaware 19903 or by fax to (302) 739-2602 by December 31, 2008.

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